

Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,
Plaintiff,
v.

JEREMY JOHNSON, individually, as officer of
Defendants I Works, Inc.; Cloud Nine, Inc.; CPA
Upsell, Inc.; Elite Debit, Inc.; Internet Economy,
Inc.; Market Funding Solutions, Inc.; and
Success Marketing, Inc.; as a member of
Defendant Network Agenda LLC; and as the *de*
facto principal of numerous Defendant Shell
Companies identified below;

DUANE FIELDING, individually, as an officer
of Anthon Holdings, Inc., and as a member of
Defendant Network Agenda LLC;

ANDY JOHNSON, individually, as a manager of
I Works, Inc., and as titular principal of

10-cv-2203-RLH (GWF)

FIRST AMENDED
COMPLAINT

1 numerous Defendant Shell Companies identified
2 below;

3 LOYD JOHNSTON, individually, as a manager
4 of I Works, Inc., and as titular principal of
5 numerous Defendant Shell Companies identified
6 below;

7 SCOTT LEAVITT, individually, as a manager of
8 I Works, Inc., and as a principal of Defendant
9 Employee Plus, Inc.;

10 SCOTT MUIR, individually and as titular
11 principal of numerous Defendant Shell
12 Companies identified below;

13 BRYCE PAYNE, individually, as a manager of
14 I Works, Inc., and as titular principal of
15 Defendant JRB Media, Inc., a Shell Company;

16 KEVIN PILON, individually and as titular
17 principal of numerous Defendant Shell
18 Companies identified below;

19 RYAN RIDDLE, individually, as a former
20 manager of I Works, Inc., and as titular
21 principal of Defendant Diamond J Media, Inc., a
22 Shell Company;

23 TERRASON SPINKS, individually and as
24 principal of Defendant Jet Processing, Inc., a
25 Shell Company;

26 I WORKS, INC., a Utah Corporation;

27 ANTHON HOLDINGS CORP., a Utah
28 Corporation;

CLOUD NINE MARKETING, INC., a Nevada
Corporation;

CPA UPSELL, INC., a California Corporation;

ELITE DEBIT, INC., a Utah Corporation;

EMPLOYEE PLUS, INC., a Utah Corporation;

INTERNET ECONOMY, INC., a Nevada
Corporation;

MARKET FUNDING SOLUTIONS, INC., a
Nevada Corporation;

NETWORK AGENDA, LLC, a Nevada limited liability company;

SUCCESS MARKETING, INC., a Utah Corporation;

and the following Shell Companies

BIG BUCKS PRO, INC., a Nevada Corporation;

BLUE NET PROGRESS, INC., an Oklahoma Corporation;

BLUE STREAK PROCESSING, INC., a Delaware Corporation;

BOLT MARKETING, INC., a California Corporation;

BOTTOM DOLLAR, INC., dba Bad Customer.com, a Nevada Corporation;

BUMBLE MARKETING, INC., a Nevada Corporation;

BUSINESS FIRST, INC., a Delaware Corporation;

BUSINESS LOAN SUCCESS, INC., a Nevada Corporation;

COLD BAY MEDIA, INC., an Oklahoma Corporation;

COSTNET DISCOUNTS, INC., a California Corporation;

CS PROCESSING, INC., a Nevada Corporation;

CUTTING EDGE PROCESSING, INC., a California Corporation;

DIAMOND J MEDIA, INC., a Nevada Corporation;

EBUSINESS FIRST, INC., a California Corporation;

EBUSINESS SUCCESS, INC., a New York Corporation;

ECOM SUCCESS, INC., a Delaware Corporation;

EXCESS NET SUCCESS, INC., a California Corporation;

FISCAL FIDELITY, INC., a Nevada Corporation;

FITNESS PROCESSING, INC., a California Corporation;

FUNDING SEARCH SUCCESS, INC., a Nevada Corporation;

FUNDING SUCCESS, INC., a Nevada Corporation;

GG PROCESSING, INC., a California Corporation;

GGL REWARDS, INC., a Nevada Corporation;

HIGHLIGHT MARKETING, INC., a California Corporation;

HOOVER PROCESSING, INC., a Nevada Corporation;

INTERNET BUSINESS SOURCE, INC., a California Corporation;

INTERNET FITNESS, INC., a Nevada Corporation;

JET PROCESSING, INC., a Utah Corporation;

JRB MEDIA, INC., a Nevada Corporation;

LIFESTYLES FOR FITNESS, INC., a Nevada Corporation;

MIST MARKETING, INC., a California Corporation;

MONEY HARVEST, INC., an Oklahoma Corporation;

MONROE PROCESSING, INC., an Oklahoma Corporation;

NET BUSINESS SUCCESS, INC., a California Corporation;

NET COMMERCE, INC., a New York Corporation;

NET DISCOUNTS, INC., a Nevada Corporation;

NET FIT TRENDS, INC., a California Corporation;

OPTIMUM ASSISTANCE, INC., a Nevada Corporation;

POWER PROCESSING, INC., an Oklahoma Corporation;

PREMIER PERFORMANCE, INC., a New York Corporation;

PRO INTERNET SERVICES, INC., a New York Corporation;

RAZOR PROCESSING, INC., a California Corporation;

REBATE DEALS, INC., a Nevada Corporation;

REVIVE MARKETING, INC., a Nevada Corporation;

SIMCOR MARKETING, INC., a Nevada Corporation;

SUMMIT PROCESSING, INC., a Nevada Corporation;

THE NET SUCCESS, INC., a Nevada Corporation;

TRANFIRST, INC., a Delaware Corporation;

TRAN VOYAGE, INC., a Delaware Corporation;

UNLIMITED PROCESSING, INC., a New York Corporation;

XCEL PROCESSING, INC., a California Corporation;

Defendants,

and

SHARLA JOHNSON, individually, and as a nominal owner, partner, manager, or officer of Kombi Capital, LP, Orange Cat Investments, LLC, Zibby, LLC, and Zibby Flight Service,

1 **LLC;**

2 **BARBARA JOHNSON, individually, and as an**
 3 **owner, manager, or officer of KV Electric, Inc.**
 4 **and the KB Family Limited Partnership;**

5 **KERRY JOHNSON, individually, and as an**
 6 **owner, manager, or officer of KV Electric, Inc.**
 7 **and the KB Family Limited Partnership;**

8 **THE KB FAMILY LIMITED PARTNERSHIP;**
 9 **a Utah limited partnership;**

10 **KV ELECTRIC, INC., a Utah Corporation;**

11 **ORANGE CAT INVESTMENTS, LLC, a Utah**
 12 **limited liability company;**

13 **ZIBBY, LLC, a Utah limited liability company;**
 14 **and**

15 **ZIBBY FLIGHT SERVICE, LLC, a Delaware**
 16 **limited liability company;**

17 **Relief Defendants.**

18 Plaintiff, the Federal Trade Commission, (“FTC” or “Commission”), for its Complaint
 19 alleges that:

20 1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade
 21 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 917(c) of the Electronic Fund
 22 Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), to obtain permanent injunctive relief, rescission
 23 or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable
 24 relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
 25 § 45(a), Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E,
 26 12 C.F.R. § 205.10(b), in connection with the marketing and sale of Internet-based
 27 information products and services.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b). This action arises under 15 U.S.C. § 45(a) and 15 U.S.C. §§ 1693e and 1693o(c).

3. Venue in the United States District Court for the District of Nevada is proper under 28 U.S.C. §1391(b) and (c) and 15 U.S.C. § 53(b).

SUMMARY OF THE CASE

4. The Defendants in this case operate a far-reaching Internet enterprise that deceptively enrolls unwitting consumers into memberships for products or services and then repeatedly charges their credit cards or debits funds from their checking accounts without consumers' knowledge or authorization for memberships the consumers never agreed to accept. This scam has caused hundreds of thousands of consumers to seek chargebacks – reversals of charges to their credit cards or debits to their banks accounts. The high number of chargebacks has landed the Defendants in VISA's and MasterCard's chargeback monitoring programs, resulted in millions of dollars in fines for excessive chargebacks, and led to the termination of numerous of Defendants' merchant accounts through which they had been billing their victims. Yet, rather than curing their deceptions, Defendants have employed a variety of stratagems to continue and expand their scam, thereby causing unreimbursed consumer injury to mount to more than \$275 million since 2006. For instance, in 2009 Defendants incorporated more than 50 Shell Companies using maildrop addresses and straw-figures as owners and officers because they knew that it was unlikely they could obtain additional merchant accounts using existing companies, due to these companies' negative chargeback histories. Defendants then applied through intermediaries called Payment Processors for new merchant accounts in the names of these "front" companies in order to continue processing the credit and debit card charges for the online memberships Defendants sell. They have also attempted to drive down their chargeback rates by threatening to report consumers who seek chargebacks to an Internet consumer blacklist they operate called "BadCustomer.com" that will "result in member merchants blocking [the

1 consumer] from making future purchases online!” And they have attempted to counter the large
2 number of complaints about their conduct by flooding the Internet with supposedly independent
3 positive articles and other web pages.

4 5. Defendants lure consumers into their scam through websites that claim to offer
5 free or risk-free information about products or services (“products” or “programs”) such as
6 government grants to pay personal expenses and Internet-based money-making opportunities.
7 As explained in greater detail below, Defendants’ government grant and money-making
8 opportunity websites are replete with misrepresentations about the availability of grants for
9 personal expenses and the likely profitability of the money-making opportunities. Moreover, the
10 government grant websites frequently feature testimonials that falsely represent that consumers
11 who use Defendants’ grant program are likely to obtain grants such as those obtained by the
12 consumers in the testimonials.

13 6. Consumers who arrive at Defendants’ websites fill out a form and provide their
14 credit card or bank account information under the mistaken belief that their credit cards will be
15 charged or bank accounts debited only a small fee for shipping and handling, such as \$1.99 or
16 \$2.99, to receive information about obtaining government grants or making substantial amounts
17 of money. However, buried in the fine print on the Defendants’ websites (if disclosed at all) or
18 on a separate Terms page are details that completely transform the offer as understood by
19 consumers. Instead of providing a free product or service for the nominal shipping and handling
20 fee, Defendants immediately enroll consumers in multiple expensive online Negative Option
21 Continuity plans whereby consumers are charged recurring fees or other additional fees until
22 they affirmatively cancel enrollment in the plan (“Negative Option Plans”). Defendants enroll
23 consumers in online Negative Option Plans for both the advertised (“core”) product as well as
24 for additional products and services, which are known as “Upsells,” many of which are “Forced
25 Upsells.” Defendants’ Forced Upsells are products Defendants automatically bundle with the
26 core product and from which consumers cannot opt-out when signing up for the core product.
27 Pursuant to the Negative Option Plans, Defendants charge consumers’ credit cards (or debit their
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1 bank accounts) hefty one-time fees of as much as \$189 and then recurring monthly fees of as
2 much as \$59.95 for the core product, as well as recurring monthly fees for the Forced Upsells
3 costing as much as \$39.97.

4 7. Defendants also market their products through numerous online sellers that are
5 Defendants' marketing partners and clients. Defendants bundle their products as Upsells,
6 usually as Forced Upsells, with the core products offered on the websites of Defendants'
7 marketing partners. Defendants then impose monthly recurring charges or debits to consumers'
8 accounts for these Upsells. In many cases, when Defendants charge or debit consumers'
9 accounts for Defendants' Forced Upsells, Defendants know that their marketing partners do not
10 disclose, or do not disclose adequately, the existence of Defendants' Forced Upsells. Defendants
11 also provide services, such as marketing, processing charges and debits, and handling customer
12 service to on-line sellers who are Defendants' clients. In numerous instances, when Defendants
13 provide the services to their clients, Defendants bundle their products as Forced Upsells with the
14 client's core product. Defendants then impose recurring charges and debits to consumers'
15 accounts for these Forced Upsells.

16 8. When consumers receive their credit card or bank statements, they learn that they
17 have been billed far more than the *de minimus* shipping and handling fee they agreed to pay.
18 Instead, their statements show expensive charges for the core product as well as for one or more
19 of Defendants' Forced Upsells. Where the core product is offered by Defendants' marketing
20 partners or clients, consumers find charges or debits for Defendants' Upsells as well as for the
21 marketing partner's or client's core product. Some consumers fail to notice the unauthorized
22 charges for several billing cycles, if at all.

23 9. Defendants violate the FTC Act by: (1) misrepresenting that government grants
24 are available to individuals to pay for personal expenses; (2) misrepresenting that consumers
25 using Defendants' grant product are likely to find and obtain government grants to pay personal
26 expenses; (3) misrepresenting that users of Defendants' make-money products are likely to earn
27 substantial income such as \$209-\$909 per day; (4) misrepresenting that Defendants' offers are
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“free” and “risk-free,” when in reality the offers are for expensive Negative Option Plans with pricey one-time charges and monthly recurring fees; (5) failing to disclose, or disclose adequately, that Defendants immediately enroll consumers, who agree to pay a small shipping or processing fee, in Defendants’ Negative Option Plans and bill the consumers’ credit cards or debit funds from their bank accounts the high one-time fee and the monthly charges associated with the plans unless consumers cancel within a trial period of as few as three days; (6) misrepresenting that consumers using Defendants’ grant product are likely to obtain grants such as those obtained by the individuals whose testimonials appear on Defendants’ government grant websites; (7) misrepresenting that the positive articles and other web pages about Defendants’ grant and money-making products posted on the Internet are independent reviews from unbiased consumers who have successfully used Defendants’ grant and money-making products; (8) failing to disclose that the positive reviews of Defendants’ grant and money-making products were created and posted by Defendants or their agents; and (9) charging consumers’ credit cards and debiting their bank accounts without their authorization for Defendants’ Forced Upsells that are bundled with the core products sold by Defendants’ marketing partners and clients.

10. Defendants also violate EFTA and Regulation E by debiting consumers’ bank accounts on a recurring basis without obtaining written authorization signed or similarly authenticated by the consumers for preauthorized electronic fund transfers from their accounts, and by failing to provide these consumers with a copy of the written authorization.

11. Furthermore, since at least 2006, defendant Jeremy Johnson, has transferred at least \$22 million of assets of the I Works Enterprise, directly and indirectly, to the Relief defendants – defendant Jeremy Johnson’s wife and parents, and the companies they own or control. These transfers have been gratuitous, with the I Works Enterprise receiving no (or only token) consideration in exchange for the transferred assets.

PLAINTIFF

12. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),

1 which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also
 2 enforces EFTA, 15 U.S.C. § 1693o(c), and Section 205.10(b) of Regulation E, 12 C.F.R.
 3 § 205.10(b).

4 13. The FTC is authorized to initiate federal district court proceedings, by its own
 5 attorneys, to enjoin violations of the FTC Act, EFTA, and Regulation E and to secure such other
 6 equitable relief as may be appropriate in each case, including restitution and disgorgement.
 7 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 1693o(c).

8 DEFENDANTS

9 *The Corporate Defendants*

10 14. **I Works, Inc.** (“I Works”) is a Utah company incorporated in 2000. Its
 11 headquarters is located at 249 East Tabernacle Street, Suite 200, St. George, UT 84770, and it
 12 has a satellite office at 100 Wilshire Blvd, Suite 750, Santa Monica, CA 90401. I Works is in
 13 the business of Internet marketing. Its web servers are in several states, including Nevada.
 14 Defendant Jeremy Johnson (“J. Johnson” or “Jeremy Johnson”), the mastermind for the I Works
 15 Enterprise, is I Works’s sole owner and officer.

16 15. I Works does, or has done, business under numerous names including Acai, Blue
 17 Sky Marketing, Business Funding Success, ClickNOffer, Denta-brite, Easy Grant Finder, Fast
 18 Gov Grants, Fit Factory, GrantAcademy.com, GrantCreator.com, Grant Professor, Grant Master,
 19 Grant Search, Grant Writer, Internet Economy, JRS Media Solutions, Living Lean, Net Pro
 20 Marketing, Online Auction Solutions, Quick Grant Pro, Raven Media, Rebate Millionaire, SBA,
 21 Track It Daily, Websavers, and 501c3.

22 16. I Works markets its products as both core products and as Forced Upsells.
 23 I Works’s scheme typically involves the marketing of a core product with one or more Forced
 24 Upsells. The same product can appear as the core product on one I Works website and as a
 25 Forced Upsell on a different I Works website. Using numerous merchant accounts with banks
 26 such as Wells Fargo, N.A., HSBC Bank USA, First Regional Bank, Harris National Association,
 27
 28

1 and Columbus Bank and Trust Company, I Works has processed millions of credit and debit card
2 charges.

3 17. I Works also bundles its products as Upsells with the core products offered on the
4 websites of numerous marketing partners. In most instances, I Works requires that its products
5 be bundled as Forced Upsells with the marketing partner's core product.

6 18. I Works also provides numerous other on-line sellers with various services
7 including marketing the seller's product, processing credit and debit card charges for the product
8 through I Works's merchant accounts, responding to inquiries from Payment Processors and
9 banks, and/or handling customer service for these on-line sellers ("clients"). In numerous
10 instances, I Works bundles its products as Forced Upsells with the client's core product.

11 19. I Works markets its products and those of its clients on its own websites, on the
12 websites of its marketing partners, and through network marketing groups. Most of I Works's
13 offers fall into one of three lines: Government Grants for personal expenses, Make-Money
14 schemes, and Stay Healthy programs. I Works markets and sells these products under hundreds
15 of different names including Cost Smashers, Diet Central For Life, Express Business Funding,
16 Everyday Legal Forms, Fast Funding Solutions, Fit Factory, Funding Accelerator, Google
17 Money Profit, Grant Resource Center, Living Lean, Network Agenda, Personal Wealth, and
18 Rebate Millionaire.

19 20. I Works also operates, through Bottom Dollar, a Shell Company, the website
20 BadCustomer.com, which Defendants identify as an Internet consumer blacklist. Defendants
21 claim that consumers who seek chargebacks for the charges Defendants post to consumers'
22 credit card accounts will be reported to BadCustomer.com, which "will result in member
23 merchants blocking [the consumer] from making future purchases online!"

24 21. I Works also sells to telemarketers and list brokers "leads" that are consumers'
25 personal information, including sometimes consumers' billing information.

1 22. I Works has at least 18 active depository accounts in its own name at six different
2 banks. Since 2006, Defendants' sale of core products, Upsells (including Forced Upsells) and
3 consumer leads has generated more than \$350 million in sales.

4 23. I Works transacts or has transacted business in this District and throughout the
5 United States.

6 24. **Anthon Holdings Corp.** ("Anthon"), a company incorporated in Utah in 2003, is
7 located at 249 East Tabernacle Street, Suite 105, St. George, UT 84770. Defendant Duane
8 Fielding is Anthon's sole owner and officer.

9 25. Anthon does, or has done, business under various fictitious names, including
10 Network Agenda, Office Agenda, and PC Passport. These are also the names of products that
11 I Works includes as Forced Upsells with the core products that I Works markets.

12 26. In 2008, Anthon entered into an agreement with the Payment Processor Litle &
13 Co. through which it obtained merchant accounts in the name of various fictitious entities so that
14 Defendants could process the credit and debit card charges for I Works's sale of core products
15 and Upsells, many of which were Forced Upsells bundled with core products sold by I Works's
16 marketing partners and clients. Anthon was in VISA's Merchant Chargeback Monitoring
17 Program because of high chargeback levels associated with these accounts.

18 27. Anthon transacts or has transacted business in this District and throughout the
19 United States.

20 28. **Cloud Nine Marketing, Inc.** ("Cloud Nine"), a company incorporated in Nevada
21 in 2008, uses a maildrop address at 2232 South Nellis Blvd., Box # 333, Las Vegas, NV 89104.
22 Defendant Jeremy Johnson is Cloud Nine's sole owner and officer.

23 29. Cloud Nine does, or has done business, under various fictitious names, including
24 Fit Factory and Acai.

25 30. Cloud Nine obtained one or more merchant accounts in the name of various
26 fictitious entities, including Fitness Factory and Try Genuine Acai, so that Defendants could
27 process credit and debit card charges for I Works's sale of core products and Upsells, many of
28

1 which were Forced Upsells bundled with core products sold by I Works's marketing partners and
2 clients. Cloud Nine used various Payment Processors, including Litle & Co. and ECHO, to
3 obtain these merchant accounts.

4 31. In September 2008, I Works employees, using funds from I Works, opened one or
5 more depository accounts in the name of Cloud Nine, including an account at The Village Bank.
6 Since that time, Cloud Nine has transferred funds to I Works.

7 32. Cloud Nine transacts or has transacted business in this District and throughout the
8 United States.

9 33. **CPA Upsell, Inc.** ("CPA Upsell"), a company incorporated in California in
10 January 2009, is located at 100 Wilshire Blvd., Suite 750, Santa Monica, CA 90401, which is
11 also the address for I Works's satellite office. Defendant Jeremy Johnson is CPA Upsell's sole
12 owner and officer.

13 34. In 2009, some or all of I Works's in-house sales agents moved from the I Works
14 headquarters in St. George, Utah, to the offices of I Works and CPA Upsell in Santa Monica,
15 California.

16 35. CPA Upsell markets numerous products to on-line sellers to place on their own
17 websites as Upsells. On-line sellers that do so become I Works' marketing partners. I Works
18 processes the monthly charges or debits, and handles the customer service, for these Upsells.
19 These products include, but are not limited to, Calling Card Solutions, Credit Repair Toolkit,
20 Easy Google Profit, Express Business Funding, GetLoving.com, Grant Writer Pro, Grant
21 Master/Grant Search Assistant, Network Agenda, Rebate Millionaire, and Self Help Works.

22 36. CPA Upsell provides technical support to I Works's marketing partners in
23 connection with the I Works Upsells.

24 37. In 2009, I Works employees, using funds from I Works, opened one or more
25 depository accounts in the name of CPA Upsell, including an account at The Village Bank.
26 Since that time, CPA Upsell has continued to receive infusions of cash from I Works. CPA
27
28

1 Upsell's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200,
2 St. George, UT 84770.

3 38. CPA Upsell transacts or has transacted business in this District and throughout the
4 United States.

5 39. **Elite Debit, Inc.** ("Elite Debit"), a company incorporated in Utah in December
6 2009, is located at 249 East Tabernacle, Suite 200, St. George, UT 84770. Defendant Jeremy
7 Johnson is Elite Debit's sole owner and officer.

8 40. Elite Debit processes credit and debit card charges, and uses remotely-created
9 payment orders, to charge or debit consumers' accounts for I Works's sale of core products and
10 Upsells, many of which are Forced Upsells bundled with core products sold by I Works'
11 marketing partners and clients.

12 41. In December 2009, I Works employees, using funds from I Works, opened one or
13 more depository accounts in the name of Elite Debit, including an account at the SunFirst Bank.
14 Elite Debit's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite
15 200, St. George UT 84770.

16 42. Elite Debit transacts or has transacted business in this District and throughout the
17 United States.

18 43. **Employee Plus, Inc.** ("Employee Plus"), a company incorporated in Utah in 2003,
19 is located at 249 East Tabernacle Street, Suite 301, St. George, UT 84770. Employee Plus is
20 owned by Defendant Scott Leavitt.

21 44. Employee Plus obtained one or more merchant accounts in the name of various
22 fictitious entities, including Grant Search Assistant, so that Defendants could process the credit
23 and debit card charges for I Works's sale of core products and Upsells, many of which were
24 Forced Upsells bundled with core products sold by I Works's marketing partners and clients.
25 Employee Plus paid more than \$167,000 in fines to its processing banks in 2007 because of the
26 high chargeback rates associated with these accounts.

1 45. Employee Plus also provides payroll services to I Works and other companies that
2 are part of the I Works Enterprise. I Works employees are paid by Employee Plus and receive
3 pay stubs in the name of Employee Plus.

4 46. Employee Plus transacts or has transacted business in this District and throughout
5 the United States.

6 47. **Internet Economy, Inc.** (“Internet Economy”), a company incorporated in
7 Nevada in 2002, uses a maildrop address at 2620 South Maryland Parkway, Box # 859-A, Las
8 Vegas, NV 89109. Defendant Jeremy Johnson is Internet Economy’s sole owner and officer.

9 48. Internet Economy obtained one or more merchant accounts in the name of various
10 fictitious entities, including Grant Search, so that Defendants could process the credit and debit
11 card charges for I Works’s sale of core products and Upsells, many of which were Forced Upsells
12 bundled with core products sold by I Works’s marketing partners and clients. Internet Economy
13 paid more than \$1 million in fines to its processing banks between December 2007 and March
14 2009 because of the high chargeback rates associated with these accounts.

15 49. Internet Economy does not have its own bank account. All of Internet Economy’s
16 finances are handled through one or more of I Works’s bank accounts.

17 50. Internet Economy transacts or has transacted business in this District and
18 throughout the United States.

19 51. **Market Funding Solutions, Inc.** (“Market Funding”), a company incorporated in
20 Nevada in 2008, uses a maildrop address at 4790 Caughlin Parkway, Box # 735, Reno, NV
21 89509. Defendant Jeremy Johnson is Market Funding’s sole owner and officer.

22 52. Market Funding obtained merchant accounts in the name of various fictitious
23 entities, including My Auction Tutor, Nature’s Best Acai, and Personal Wealth Academy, so that
24 Defendants could process the credit and debit card charges for I Works’s sale of core products
25 and Upsells, many of which were Forced Upsells bundled with core products sold by I Works’s
26 marketing partners and clients. Market Funding paid more than \$280,850 in fines in August 2009
27 to its processing banks because of the high chargeback rates associated with these accounts.
28

1 53. In 2008, I Works employees, using funds from I Works, opened one or more
2 depository accounts in the name of Marketing Funding, including an account at The Village
3 Bank.

4 54. Market Funding transacts or has transacted business in this District and throughout
5 the United States.

6 55. **Network Agenda, LLC** (“Network Agenda”), a Nevada limited liability company
7 established in January 2009, uses a maildrop address at 2780 S. Jones Blvd., Suite 3407, Las
8 Vegas, NV 89146. Its office address is located at 249 East Tabernacle St., Suite 105, St. George,
9 UT 84770. The sole members and managers of Network Agenda are Defendants Duane Fielding
10 and Jeremy Johnson.

11 56. Network Agenda provides or has provided to I Works products by the name of
12 Network Agenda and Office Agenda. Defendant I Works includes these products as Forced
13 Upsells on the websites on which I Works offers a core product; I Works also arranges to bundle
14 as Upsells the Network Agenda products with the core products sold by I Works’s marketing
15 partners and clients.

16 57. Network Agenda obtained one or more merchant accounts so that Defendants
17 could continue to process the credit and debit card charges for I Works’s sale of core products and
18 Upsells, many of which were Forced Upsells automatically bundled with core products sold by I
19 Works’s marketing partners and clients. Network Agenda was placed in the VISA Chargeback
20 Monitoring Program because of high chargeback levels associated with these accounts.

21 58. Network Agenda transacts or has transacted business in this District and
22 throughout the United States.

23 59. **Success Marketing, Inc** (“Success Marketing”), a company incorporated in Utah
24 in 2003, uses as an address 249 East Tabernacle, Suite 200, St. George, UT 84770. Defendant
25 Jeremy Johnson is Success Marketing’s sole owner and officer.

26 60. Success Marketing obtained one or more merchant accounts in the name of various
27 fictitious entities so that Defendants could process the credit and debit card charges for I Works’s
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1 sale of core products and Upsells, many of which were Forced Upsells bundled with core
2 products sold by I Works's marketing partners and clients.

3 61. Success Marketing transacts or has transacted business in this District and
4 throughout the United States.

5 ***The Defendant Shell Companies***

6 62. In addition to the corporations listed above, Defendants have conducted the
7 business of the I Works Enterprise through the following Shell Companies, using maildrops as
8 addresses and straw-figures who are officers and owners in name only. The undisclosed principal
9 behind the Shell Companies is Defendant Jeremy Johnson. J. Johnson directed I Works's
10 employees to create the Shell Companies, open their bank accounts, and obtain maildrops to use
11 as addresses.

12 63. Defendants used the following Shell Companies as fronts, applying for new
13 merchant accounts in the names of these companies so that the Defendants would have merchant
14 accounts through which to process the credit and debit card charges from the sale of core products
15 and Upsells by the I Works Enterprise.

16 64. **Big Bucks Pro, Inc.** ("Big Bucks Pro"), a company incorporated in Nevada in
17 September 2009, uses a maildrop address at 4780 West Ann Road, Box #5-431, North Las Vegas,
18 NV 89031. Defendant Scott Muir is the titular owner and officer of Big Bucks Pro.

19 65. Big Bucks Pro is one of the shell corporations that J. Johnson and I Works
20 established to act as a front on applications to obtain new merchant accounts. In September 2009,
21 I Works employees, using funds from I Works, opened one or more depository accounts in the
22 name of Big Bucks Pro, including an account at Town & Country Bank. Big Bucks Pro's bank
23 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
24 84770.

25 66. Defendants used Big Bucks Pro to obtain one or more merchant accounts in the
26 name of various fictitious entities so that Defendants could continue to process credit and debit
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1 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
2 bundled with core products sold by I Works's marketing partners and clients.

3 67. Big Bucks Pro transacts or has transacted business in this District and throughout
4 the United States.

5 68. **Blue Net Progress, Inc.** ("Blue Net "), a company incorporated in Oklahoma in
6 November 2009, uses a maildrop address at 5030 North May Ave., Box #284, Oklahoma City,
7 OK 73112. Defendant Scott Muir is the titular owner and officer of Blue Net.

8 69. Blue Net is one of the shell corporations that J. Johnson and I Works established to
9 act as a front on applications to obtain new merchant accounts. In December 2009, I Works
10 employees, using funds from I Works, opened one or more depository accounts in the name of
11 Blue Net, including an account at Sun First Bank. Blue Net's bank statements are sent to
12 I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

13 70. Defendants used Blue Net to obtain one or more merchant accounts in the name of
14 various fictitious entities so that Defendants could continue to process credit and debit card
15 charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
16 bundled with core products sold by I Works's marketing partners and clients.

17 71. Blue Net Progress transacts or has transacted business in this District and
18 throughout the United States.

19 72. **Blue Streak Processing, Inc.** ("Blue Streak Processing"), a company incorporated
20 in Delaware in November 2009, uses a maildrop address at 40 East Main St., Box #320, Newark,
21 DE 19711. Defendant Loyd Johnston is the titular owner and officer of Blue Streak Processing.

22 73. Blue Streak Processing is one of the shell corporations that J. Johnson and
23 I Works established to act as a front on applications to obtain new merchant accounts. In
24 December 2009, an account titled in the name of Blue Streak Processing was opened at the
25 SunFirst Bank using funds from Power Processing, another Shell Company. Blue Streak
26 Processing's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite
27 200, St. George, UT 84770.

1 74. Defendants used Blue Streak Processing to obtain one or more merchant accounts
2 in the name of various fictitious entities so that Defendants could continue to process credit and
3 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
4 Upsells bundled with core products sold by I Works's marketing partners and clients.

5 75. Blue Streak Processing transacts or has transacted business in this District and
6 throughout the United States.

7 76. **Bolt Marketing, Inc.** ("Bolt Marketing"), a company incorporated in California in
8 September 2009, uses a maildrop address at 6520 Platt, Box #552, West Hills, CA 91307.
9 Defendant Scott Muir is the titular owner and officer of Bolt Marketing.

10 77. Bolt Marketing is one of the shell corporations that J. Johnson and I Works
11 established to act as a front on applications to obtain new merchant accounts. In November 2009,
12 I Works employees, using funds from I Works, opened one or more depository accounts in the
13 name of Bolt Marketing, including an account at SunFirst Bank. Bolt Marketing's bank
14 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
15 84770.

16 78. Defendants used Bolt Marketing to obtain one or more merchant accounts in the
17 name of various fictitious entities so that Defendants could continue to process credit and debit
18 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
19 bundled with core products sold by I Works's marketing partners and clients.

20 79. Bolt Marketing transacts or has transacted business in this District and throughout
21 the United States.

22 80. **Bottom Dollar, Inc.** ("Bottom Dollar"), a company incorporated in Nevada in July
23 2009, uses a maildrop address at 4080 Paradise Road, Bldg. 15, Suite 425, Las Vegas, NV 89109.
24 Defendant Kevin Pilon is the titular owner and officer of Bottom Dollar.

25 81. Bottom Dollar is one of the shell corporations that I Works and J. Johnson
26 established to act as a front on applications to obtain new merchant accounts. In July 2009,
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1 I Works employees, using funds from I Works, opened one or more depository accounts in the
2 name of Bottom Dollar, including an account at Zions Bank.

3 82. Defendants used Bottom Dollar to obtain one or more merchant accounts in the
4 name of various fictitious entities so that Defendants could continue to process credit and debit
5 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
6 bundled with core products sold by I Works's marketing partners and clients.

7 83. Bottom Dollar transacts or has transacted business in this District and throughout
8 the United States.

9 84. **Bumble Marketing, Inc.** ("Bumble Marketing"), a company incorporated in
10 Nevada in September 2009, uses a maildrop address at 2764 North Green Valley Parkway, Box
11 #667, Henderson, NV 89104. Defendant Kevin Pilon is the titular owner and officer of Bumble
12 Marketing.

13 85. Bumble Marketing is one of the shell corporations that J. Johnson and I Works
14 established to act as a front on applications to obtain new merchant accounts. In September 2009,
15 I Works employees, using funds from I Works, opened one or more depository accounts in the
16 name of Bumble Marketing, including an account at Town & Country Bank.

17 86. Defendants used Bumble Marketing to obtain one or more merchant accounts in
18 the name of various fictitious entities so that Defendants could continue to process credit and
19 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
20 Upsells bundled with core products sold by I Works's marketing partners and clients.

21 87. Bumble Marketing transacts or has transacted business in this District and
22 throughout the United States.

23 88. **Business First, Inc.** ("Business First"), a company incorporated in Delaware in
24 August 2009, uses a maildrop address at 1148 Pulaski Highway, Box #468, Bear, DE 19701.
25 Defendant Loyd Johnston is the titular owner and officer of Business First.

26 89. Business First is one of the shell corporations that J. Johnson and I Works
27 established to act as a front on applications to obtain new merchant accounts. In October 2009,
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1 I Works employees, using funds from I Works, opened one or more depository accounts in the
2 name of Business First, including an account at Town & Country Bank. Business First's bank
3 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
4 84770.

5 90. Defendants used Business First to obtain one or more merchant accounts in the
6 name of various fictitious entities so that Defendants could continue to process credit and debit
7 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
8 bundled with core products sold by I Works's marketing partners and clients.

9 91. Business First transacts or has transacted business in this District and throughout
10 the United States.

11 92. **Business Loan Success, Inc.** ("Business Loan Success"), a company incorporated
12 in Nevada in June 2009, uses a maildrop address at 8174 South Las Vegas Boulevard, #109 PMB
13 24, Las Vegas, NV 89123. Defendant Scott Muir is the titular owner and officer of Business
14 Loan Success.

15 93. Business Loan Success is one of the shell corporations that J. Johnson and
16 I Works established to act as a front on applications to obtain new merchant accounts. In June
17 2009, I Works employees, using funds from I Works, opened one or more depository accounts in
18 the name of Business Loan Success, including an account at Far West Bank. Business Loan
19 Success's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200,
20 St. George, UT 84770.

21 94. Defendants used Business Loan Success to obtain one or more merchant accounts
22 in the name of various fictitious entities so that Defendants could continue to process credit and
23 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
24 Upsells bundled with core products sold by I Works's marketing partners and clients.

25 95. Business Loan Success transacts or has transacted business in this District and
26 throughout the United States.

1 96. **Cold Bay Media, Inc.** (“Cold Bay Media”), a company incorporated in Oklahoma
2 in October 2009, uses a maildrop address at 1050 East 2nd Street, Box #500, Edmond, OK 73034.
3 Defendant Loyd Johnston is the titular owner and officer of Cold Bay Media.

4 97. Cold Bay Media is one of the shell corporations that J. Johnson and I Works
5 established to act as a front on applications to obtain new merchant accounts. In November 2009,
6 I Works employees, using funds from I Works, opened one or more depository accounts in the
7 name of Cold Bay Media, including an account at SunFirst Bank. Cold Bay Media’s bank
8 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
9 84770.

10 98. Defendants used Cold Bay Media to obtain one or more merchant accounts in the
11 name of various fictitious entities so that Defendants could continue to process credit and debit
12 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
13 bundled with core products sold by I Works’s marketing partners and clients.

14 99. Cold Bay Media transacts or has transacted business in this District and throughout
15 the United States.

16 100. **Costnet Discounts, Inc.** (“Costnet Discounts”), a company incorporated in
17 California in July 2009, uses a maildrop address at 4712 Admiralty Way, Box #572, Marina Del
18 Ray, CA 90292. Defendant Kevin Pilon is the titular owner and officer of Costnet Discounts.

19 101. Costnet Discounts is one of the shell corporations that J. Johnson and I Works
20 established to act as a front on applications to obtain new merchant accounts.

21 102. Defendants used Costnet Discounts to obtain one or more merchant accounts in the
22 name of various fictitious entities so that Defendants could continue to process credit and debit
23 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
24 bundled with core products sold by I Works’s marketing partners and clients.

25 103. Costnet Discounts transacts or has transacted business in this District and
26 throughout the United States.

1 104. **CS Processing, Inc.** (“CS Processing”), a company incorporated in Nevada in
2 April 2009, uses a maildrop address at 18124 Wedge Parkway, PMB 434, Reno, NV 89511.
3 Defendant Scott Muir is the titular owner and officer of CS Processing.

4 105. CS Processing is one of the shell corporations that J. Johnson and I Works
5 established to act as a front on applications to obtain new merchant accounts. In October 2009, a
6 depository account titled in the name of CS Processing was opened at the Town & Country Bank
7 using funds from xCel Processing, another Shell Company.

8 106. Defendants used CS Processing to obtain one or more merchant accounts in the
9 name of various fictitious entities so that Defendants could continue to process credit and debit
10 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
11 bundled with core products sold by I Works’s marketing partners and clients.

12 107. CS Processing transacts or has transacted business in this District and throughout
13 the United States.

14 108. **Cutting Edge Processing, Inc.** (“Cutting Edge Processing”), a company
15 incorporated in California in July 2009, uses a maildrop address at 11301 West Olympic
16 Boulevard, Box #510, Los Angeles, CA 90064. Defendant Kevin Pilon is the titular owner and
17 officer of Cutting Edge Processing.

18 109. Cutting Edge Processing is one of the shell corporations that J. Johnson and
19 I Works established to act as a front on applications to obtain new merchant accounts. In August
20 2009, I Works employees, using funds from I Works, opened one or more depository accounts in
21 the name of Cutting Edge Processing, including an account at Zions Bank.

22 110. Defendants used Cutting Edge Processing to obtain one or more merchant
23 accounts in the name of various fictitious entities so that Defendants could continue to process
24 credit and debit card charges for I Works’s sale of core products and Upsells, many of which are
25 Forced Upsells bundled with core products sold by I Works’s marketing partners and clients.

26 111. Cutting Edge Processing transacts or has transacted business in this District and
27 throughout the United States.

1 112. **Diamond J Media, Inc.** (“DJM”), a company incorporated in Nevada in 2009,
2 uses a maildrop address at 1285 Baring Blvd., Box # 506, Sparks, NV 87434. Defendant Ryan
3 Riddle is the titular owner and officer of DJM.

4 113. DJM is one of the shell corporations that J. Johnson and I Works established to act
5 as a front on applications to obtain new merchant accounts. In 2009, I Works employees, using
6 funds from I Works, opened one or more depository accounts in the name of DJM, including an
7 account at The Village Bank. DJM’s bank statements are sent to I Works’s headquarters at 249
8 East Tabernacle, Suite 200, St. George, UT 84770.

9 114. Defendants used DJM to obtain one or more merchant accounts in the name of
10 various fictitious entities so that Defendants could process the credit and debit card charges for
11 I Works’s sale of core products and Upsells, many of which are Forced Upsells bundled with
12 core products sold by I Works’s marketing partners and clients. In 2009, DJM paid more than
13 \$86,000 in fines to its processing banks because of the high chargeback rates associated with
14 these accounts.

15 115. DJM transacts or has transacted business in this District and throughout the United
16 States.

17 116. **Ebusiness First, Inc.** (“Ebusiness First”), a company incorporated in California in
18 2009, uses a maildrop address at 2828 Cochran Street, Box #508, Simi Valley, CA 93065.
19 Defendant Kevin Pilon is the titular owner and officer of Ebusiness First.

20 117. Ebusiness First is one of the shell corporations that J. Johnson and I Works
21 established to act as a front on applications to obtain new merchant accounts.

22 118. Defendants used Ebusiness First to obtain one or more merchant accounts in the
23 name of various fictitious entities so that Defendants could continue to process credit and debit
24 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
25 bundled with core products sold by I Works’s marketing partners and clients.

26 119. Ebusiness First transacts or has transacted business in this District and throughout
27 the United States.

1 120. **Ebusiness Success, Inc.** (“Ebusiness Success”), a company incorporated in New
2 York in July 2009, uses a maildrop address at 163 Amsterdam Avenue, Box #324, New York, NY
3 10023. Defendant Loyd Johnston is the titular owner and officer of Ebusiness Success.

4 121. Ebusiness Success is one of the shell corporations that J. Johnson and I Works
5 established to act as a front on applications to obtain new merchant accounts. In August 2009,
6 I Works employees, using funds from I Works, opened one or more depository accounts in the
7 name of Ebusiness Success, including an account at The Village Bank. Ebusiness Success’s bank
8 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
9 84770.

10 122. Defendants used Ebusiness Success to obtain one or more merchant accounts in
11 the name of various fictitious entities so that Defendants could continue to process credit and
12 debit card charges for I Works’s sale of core products and Upsells, many of which are Forced
13 Upsells bundled with core products sold by I Works’s marketing partners and clients.

14 123. Ebusiness Success transacts or has transacted business in this District and
15 throughout the United States.

16 124. **eCom Success, Inc.** (“eCom Success”), a company incorporated in Delaware in
17 August 2009, uses a maildrop address at 364 East Main Street, Suite 155, Middletown, DE 19709.
18 Defendant Loyd Johnston is the titular owner and officer of eCom Success.

19 125. eCom Success is one of the shell corporations that J. Johnson and I Works
20 established to act as a front on applications to obtain new merchant accounts. In October 2009,
21 I Works employees, using funds from I Works, opened one or more depository accounts in the
22 name of eCom Success, including an account at Town & Country Bank. eCom Success’s bank
23 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
24 84770.

25 126. Defendants used eCom Success to obtain one or more merchant accounts in the
26 name of various fictitious entities so that Defendants could continue to process credit and debit
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1 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
2 bundled with core products sold by I Works's marketing partners and clients.

3 127. eCom Success transacts or has transacted business in this District and throughout
4 the United States.

5 128. **Excess Net Success, Inc.** ("Excess Net Success"), a company incorporated in
6 California in July 2009, uses a maildrop address at 10573 West Pico Boulevard, Box #815, Los
7 Angeles, CA 90064. Defendant Kevin Pilon is the titular owner and officer of Excess Net
8 Success.

9 129. Excess Net Success is one of the shell corporations that J. Johnson and I Works
10 established to act as a front on applications to obtain new merchant accounts. In September 2009,
11 I Works employees, using funds from I Works, opened one or more depository accounts in the
12 name of Excess Net Success, including an account at Zions Bank.

13 130. Defendants used Excess Net Success to obtain one or more merchant accounts in
14 the name of various fictitious entities so that Defendants could continue to process credit and
15 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
16 Upsells bundled with core products sold by I Works's marketing partners and clients.

17 131. Excess Net Success transacts or has transacted business in this District and
18 throughout the United States.

19 132. **Fiscal Fidelity, Inc.** ("Fiscal Fidelity"), a company incorporated in Nevada in July
20 2009, uses a maildrop address at 748 South Meadow Parkway, Ste. A9 #328, Reno, NV 89521.
21 Defendant Kevin Pilon is the titular owner and officer of Fiscal Fidelity.

22 133. Fiscal Fidelity is one of the shell corporations that J. Johnson and I Works
23 established to act as a front on applications to obtain new merchant accounts.

24 134. Defendants used Fiscal Fidelity to obtain one or more merchant accounts in the
25 name of various fictitious entities so that Defendants could continue to process credit and debit
26 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
27 bundled with the core products sold by I Works's marketing partners and clients.
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1 135. Fiscal Fidelity transacts or has transacted business in this District and throughout
2 the United States.

3 136. **Fitness Processing, Inc.** (“Fitness Processing”), a company incorporated in
4 California in July 2009, uses a maildrop address at 13428 Maxella Avenue, Box #663, Marina
5 Del Ray, CA 90292. Defendant Kevin Pilon is the titular owner and officer of Fitness Processing.

6 137. Fitness Processing is one of the shell corporations that J. Johnson and I Works
7 established to act as a front on applications to obtain new merchant accounts. In August 2009,
8 I Works employees, using funds from I Works, opened one or more depository accounts in the
9 name of Fitness Processing, including an account at Zions Bank.

10 138. Defendants used Fitness Processing to obtain one or more merchant accounts in
11 the name of various fictitious entities so that Defendants could continue to process credit and
12 debit card charges for I Works’s sale of core products and Upsells, many of which are Forced
13 Upsells bundled with core products sold by I Works’s marketing partners and clients.

14 139. Fitness Processing transacts or has transacted business in this District and
15 throughout the United States.

16 140. **Funding Search Success, Inc.** (“Funding Search Success”), a company
17 incorporated in Nevada in July 2009, uses a maildrop address at 2764 N. Green Valley Parkway,
18 Ste. 827, Henderson, NV 89014. Margaret L. Holm is the titular owner and officer of Funding
19 Search Success.

20 141. Funding Search Success is one of the shell corporations that J. Johnson and
21 I Works established to act as a front on applications to obtain new merchant accounts. In August
22 2009, I Works employees, using funds from I Works, opened one or more depository accounts in
23 the name of Funding Search Success, including an account at The Village Bank. Funding Search
24 Success’s bank statements are sent to I Work’s headquarters at 249 East Tabernacle, Suite 200,
25 St. George, UT 84770.

26 142. Defendants used Funding Search Success to obtain one or more merchant accounts
27 in the name of various fictitious entities so that Defendants could continue to process credit and
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1 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
2 Upsells bundled with core products sold by I Works's marketing partners and clients.

3 143. Funding Search Success transacts or has transacted business in this District and
4 throughout the United States.

5 144. **Funding Success, Inc.** ("Funding Success"), a company incorporated in Nevada in
6 June 2009, uses a maildrop address at 10580 North McCarren Boulevard, 115 Ste. 368, Reno, NV
7 89503. Defendant Andy Johnson is the titular owner and officer of Funding Success.

8 145. Funding Success is one of the shell corporations that J. Johnson and I Works
9 established to act as a front on applications to obtain new merchant accounts. In June 2009,
10 I Works employees, using funds from I Works, opened one or more depository accounts in the
11 name of Funding Success, including an account at Far West Bank. Funding Success's bank
12 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
13 84770.

14 146. Defendants used Funding Success to obtain one or more merchant accounts in the
15 name of various fictitious entities so that Defendants could continue to process credit and debit
16 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
17 bundled with core products sold by I Works's marketing partners and clients.

18 147. Funding Success transacts or has transacted business in this District and
19 throughout the United States.

20 148. **GG Processing, Inc.** ("GG Processing"), a company incorporated in California in
21 August 2009, uses a maildrop address at 214 Main Street, Box #329, El Segundo, CA 90245.
22 Defendant Kevin Pilon is the titular owner and officer of GG Processing.

23 149. GG Processing is one of the shell corporations that J. Johnson and I Works
24 established to act as a front on applications to obtain new merchant accounts. In September 2009,
25 a depository account titled in the name of GG Processing was opened at the Town & Country
26 Bank using funds from xCel Processing, another Shell Company. GG Processing's bank
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1 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
2 84770.

3 150. Defendants used GG Processing to obtain one or more merchant accounts in the
4 name of various fictitious entities so that Defendants could continue to process credit and debit
5 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
6 bundled with core products sold by I Works's marketing partners and clients.

7 151. GG Processing transacts or has transacted business in this District and throughout
8 the United States.

9 152. **GGL Rewards, Inc.** ("GGL Rewards"), a company incorporated in Nevada in
10 June 2009, uses a maildrop address at 848 North Rainbow Boulevard 2984, Las Vegas NV 89107.
11 Defendant Scott Muir is the titular owner and officer of GGL Rewards.

12 153. GGL Rewards is one of the shell corporations that J. Johnson and I Works
13 established to act as a front on applications to obtain new merchant accounts. GGL Reward's
14 bank statements are sent to I Works' headquarters at 249 East Tabernacle, Suite 200, St. George,
15 UT 84770.

16 154. Defendants used GGL Rewards to obtain one or more merchant accounts in the
17 name of various fictitious entities so that Defendants could continue to process credit and debit
18 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
19 bundled with core products sold by I Works's marketing partners and clients.

20 155. GGL Rewards transacts or has transacted business in this District and throughout
21 the United States.

22 156. **Highlight Marketing, Inc.** ("Highlight Marketing"), a company incorporated in
23 California in September 2009, uses a maildrop address at 15218 Summit Avenue, Suite 300,
24 Fontana, CA 92336. Defendant Scott Muir is the titular owner and officer of Highlight
25 Marketing.

26 157. Highlight Marketing is one of the shell corporations that J. Johnson and I Works
27 established to act as a front on applications to obtain new merchant accounts. In November 2009,
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1 I Works employees, using funds from I Works, opened one or more depository accounts in the
2 name of Highlight Marketing, including an account at SunFirst Bank. Highlight Marketing's
3 bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George,
4 UT 84770.

5 158. Defendants used Highlight Marketing to obtain one or more merchant accounts in
6 the name of various fictitious entities so that Defendants could continue to process credit and
7 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
8 Upsells bundled with core products sold by I Works's marketing partners and clients.

9 159. Highlight Marketing transacts or has transacted business in this District and
10 throughout the United States.

11 160. **Hooper Processing, Inc.** ("Hooper Processing"), a company incorporated in
12 Nevada in September 2009, uses a maildrop address at 1894 HWY 50 East, Suite 4 Box #182,
13 Carson City, NV 89701. Defendant Andy Johnson is the titular owner and officer of Hooper
14 Processing.

15 161. Hooper Processing is one of the shell corporations that J. Johnson and I Works
16 established to act as a front on applications to obtain new merchant accounts. In September 2009,
17 I Works employees, using funds from I Works, opened one or more depository accounts in the
18 name of Hooper Processing, including an account at Town & Country Bank. Hooper
19 Processing's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite
20 200, St. George, UT 84770.

21 162. Defendants used Hooper Processing to obtain one or more merchant accounts in
22 the name of various fictitious entities so that Defendants could continue to process credit and
23 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
24 Upsells bundled with core products sold by I Works's marketing partners and clients.

25 163. Hooper Processing transacts or has transacted business in this District and
26 throughout the United States.

1 164. **Internet Business Source, Inc.** (“Internet Business Source”), a company
2 incorporated in California in July 2009, uses a maildrop address at 10401-106 Venice Boulevard,
3 Los Angeles, CA 90034. Defendant Kevin Pilon is the titular owner and officer of Internet
4 Business Source.

5 165. Internet Business Source is one of the shell corporations that J. Johnson and
6 I Works established to act as a front on applications to obtain new merchant accounts. In August
7 2009, I Works employees, using funds from I Works, opened one or more depository accounts in
8 the name of Internet Business Success, including an account at Zions Bank.

9 166. Defendants used Internet Business Source to obtain one or more merchant
10 accounts in the name of various fictitious entities so that Defendants could continue to process
11 credit and debit card charges for I Works’s sale of core products and Upsells, many of which are
12 Forced Upsells bundled with core products sold by I Works’s marketing partners and clients.

13 167. Internet Business Source transacts or has transacted business in this District and
14 throughout the United States.

15 168. **Internet Fitness, Inc.** (“Internet Fitness”), a company incorporated in Nevada in
16 June 2009, uses a maildrop address at 2510 East Sunset Road, Bldg. 5 Suite 527, Las Vegas, NV
17 89120. Defendant Andy Johnson is the titular owner and officer of Internet Fitness.

18 169. Internet Fitness is one of the shell corporations that J. Johnson and I Works
19 established to act as a front on applications to obtain new merchant accounts. In August 2009,
20 I Works employees, using funds from I Works, opened one or more depository accounts in the
21 name of Internet Fitness, including an account at Town & Country Bank. Internet Fitness’s bank
22 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
23 84770.

24 170. Defendants used Internet Fitness to obtain one or more merchant accounts in the
25 name of various fictitious entities so that Defendants could continue to process credit and debit
26 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
27 bundled with core products sold by I Works’s marketing partners and clients.

1 171. Internet Fitness transacts or has transacted business in this District and throughout
2 the United States.

3 172. **Jet Processing, Inc.** (“Jet Processing”), a company incorporated in Nevada in
4 February 2009, uses a maildrop address at 2644 East 1300 South, St. George, UT 84790.
5 Defendant Terrason Spinks is the owner and officer of Jet Processing.

6 173. Jet Processing is one of the shell corporations that J. Johnson and I Works
7 established to act as a front on applications to obtain new merchant accounts. In September 2009,
8 I Works employees, using funds from I Works, opened one or more depository accounts in the
9 name of Jet Processing, including an account at The Village Bank. Jet Processing’s bank
10 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
11 84770.

12 174. Defendants used Jet Processing to obtain one or more merchant accounts in the
13 name of various fictitious entities so that Defendants could continue to process credit and debit
14 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
15 bundled with core products sold by I Works’s marketing partners and clients.

16 175. Jet Processing transacts or has transacted business in this District and throughout
17 the United States.

18 176. **JRB Media, Inc.** (“JRB Media”), a company incorporated in Nevada in January
19 2009, uses a maildrop address at 18124 Wedge Parkway, Box #519, Reno, NV 89511. Defendant
20 Bryce Payne is the titular owner and officer of JRB Media.

21 177. JRB Media is one of the shell corporations that J. Johnson and I Works established
22 to act as a front on applications to obtain new merchant accounts. In January 2009, I Works
23 employees, using funds from I Works, opened one or more depository accounts in the name of
24 JRB Media, including an account at The Village Bank. JRB Media’s bank statements are sent to I
25 Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

26 178. Defendants used JRB Media to obtain one or more merchant accounts in the name
27 of various fictitious entities so that Defendants could continue to process credit and debit card
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1 charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
2 bundled with core products sold by I Works's marketing partners and clients.

3 179. JRB Media transacts or has transacted business in this District and throughout the
4 United States.

5 180. **Lifestyles For Fitness, Inc.** ("Lifestyles For Fitness"), a company incorporated in
6 Nevada in June 2009, uses a maildrop address at 1805 North Carson Street, Suite 313, Carson
7 City, NV 89701. Margaret L. Holm is the titular owner and officer of Lifestyles for Fitness.

8 181. Lifestyles For Fitness is one of the shell corporations that J. Johnson and I Works
9 established to act as a front on applications to obtain new merchant accounts. In July 2009,
10 I Works employees, using funds from I Works, opened one or more depository accounts in the
11 name of Lifestyles For Fitness, including an account at Far West Bank. Lifestyles For Fitness's
12 bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George,
13 UT 84770.

14 182. Defendants used Lifestyles For Fitness to obtain one or more merchant accounts in
15 the name of various fictitious entities so that Defendants could continue to process credit and
16 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
17 Upsells bundled with core products sold by I Works's marketing partners and clients.

18 183. Lifestyles For Fitness transacts or has transacted business in this District and
19 throughout the United States.

20 184. **Mist Marketing, Inc.** ("Mist Marketing"), a company incorporated in California
21 in September 2009, uses a maildrop address at 11230 Gold Express Drive, Suite 310-157, Gold
22 River, CA 92336. Defendant Scott Muir is the titular owner and officer of Mist Marketing.

23 185. Mist Marketing is one of the shell corporations that J. Johnson and I Works
24 established to act as a front on applications to obtain new merchant accounts. In November 2009,
25 I Works employees, using funds from I Works, opened one or more depository accounts in the
26 name of Mist Marketing, including an account at SunFirst Bank. Mist Marketing's bank
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1 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
2 84770.

3 186. Defendants used Mist Marketing to obtain one or more merchant accounts in the
4 name of various fictitious entities so that Defendants could continue to process credit and debit
5 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
6 bundled with core products sold by I Works's marketing partners and clients.

7 187. Mist Marketing transacts or has transacted business in this District and throughout
8 the United States.

9 188. **Money Harvest, Inc.** ("Money Harvest"), a company incorporated in Oklahoma
10 in October 2009, uses a maildrop address at 16111 South Utica, Box # 137, Tulsa, OK 74104.
11 Defendant Loyd Johnston is the titular owner and officer of Money Harvest.

12 189. Money Harvest is one of the shell corporations that J. Johnson and I Works
13 established to act as a front on applications to obtain new merchant accounts. In November 2009,
14 I Works employees, using funds from I Works, opened one or more depository accounts in the
15 name of Money Harvest, including an account at SunFirst Bank. Money Harvest's bank
16 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
17 84770.

18 190. Defendants used Money Harvest to obtain one or more merchant accounts in the
19 name of various fictitious entities so that Defendants could continue to process credit and debit
20 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
21 bundled with core products sold by I Works's marketing partners and clients.

22 191. Money Harvest transacts or has transacted business in this District and throughout
23 the United States.

24 192. **Monroe Processing, Inc.** ("Monroe Processing"), a company incorporated in
25 Oklahoma in October 2009, uses a maildrop address at 7107 South Yale, Box #332, Tulsa, OK
26 74136. Defendant Loyd Johnston is the titular owner and officer of Monroe Processing.

1 193. Monroe Processing is one of the shell corporations that J. Johnson and I Works
2 established to act as a front on applications to obtain new merchant accounts. In November 2009,
3 I Works employees, using funds from I Works, opened one or more depository accounts in the
4 name of Monroe Processing, including an account at SunFirst Bank. Monroe Processing's bank
5 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
6 84770.

7 194. Defendants used Monroe Processing to obtain one or more merchant accounts in
8 the name of various fictitious entities so that Defendants could continue to process credit and
9 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
10 Upsells bundled with core products sold by I Works's marketing partners and clients.

11 195. Monroe Processing transacts or has transacted business in this District and
12 throughout the United States.

13 196. **Net Business Success, Inc.** ("Net Business Success"), a company incorporated in
14 California in July 2009, uses a maildrop address at 1171 South Robertson Boulevard, Box #397,
15 Los Angeles, CA 90034. Defendant Kevin Pilon is the titular owner and officer of Net Business
16 Success.

17 197. Net Business Success is one of the shell corporations that J. Johnson and I Works
18 established to act as a front on applications to obtain new merchant accounts. In August 2009,
19 I Works employees, using funds from I Works, opened one or more depository accounts in the
20 name of Net Business Success, including an account at Zions Bank. Net Business Success' bank
21 statements are sent to I Works' headquarters at 249 East Tabernacle, Suite 200, St. George, UT
22 84770.

23 198. Defendants used Net Business Success to obtain one or more merchant accounts in
24 the name of various fictitious entities so that Defendants could continue to process credit and
25 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
26 Upsells bundled with core products sold by I Works's marketing partners and clients.

1 199. Net Business Success transacts or has transacted business in this District and
2 throughout the United States.

3 200. **Net Commerce, Inc.** (“Net Commerce”), a company incorporated in New York in
4 March 2009, uses a maildrop address at 954 Lexington Avenue, Box #516, New York, NY
5 10011. Defendant Loyd Johnston is the titular owner and officer of Net Commerce.

6 201. Net Commerce is one of the shell corporations that J. Johnson and I Works
7 established to act as a front on applications to obtain new merchant accounts. In August 2009,
8 I Works employees, using funds from I Works, opened one or more depository accounts in the
9 name of Net Commerce, including an account at The Village Bank. Net Commerce’s bank
10 statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT
11 84770.

12 202. Defendants used Net Commerce to obtain one or more merchant accounts in the
13 name of various fictitious entities so that Defendants could continue to process credit and debit
14 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
15 bundled with core products sold by I Works’s marketing partners and clients.

16 203. Net Commerce transacts or has transacted business in this District and throughout
17 the United States.

18 204. **Net Discounts, Inc.** (“Net Discounts”), a company incorporated in Nevada in June
19 2009, uses a maildrop address at 2764 North Green Valley Parkway, Suite 706, Henderson, NV
20 89104. Defendant Scott Muir is the titular owner and officer of Net Discounts.

21 205. Net Discounts is one of the shell corporations that J. Johnson and I Works
22 established to act as a front on applications to obtain new merchant accounts. In June 2009,
23 I Works employees, using funds from I Works, opened one or more depository accounts in the
24 name of Net Discount, including an account at Far West Bank. Net Discounts’s bank statements
25 are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

26 206. Defendants used Net Discounts to obtain one or more merchant accounts in the
27 name of various fictitious entities so that Defendants could continue to process credit and debit
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1 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
2 bundled with core products sold by I Works's marketing partners and clients.

3 207. Net Discounts transacts or has transacted business in this District and throughout
4 the United States.

5 208. **Net Fit Trends, Inc.** ("Net Fit Trends"), a company incorporated in California in
6 July 2009, uses a maildrop address at 8581 Santa Monica Boulevard, Box #443, West Hollywood,
7 CA 90069. Defendant Kevin Pilon is the titular owner and officer of Net Fit Trends.

8 209. Net Fit Trends is one of the shell corporations that J. Johnson and I Works
9 established to act as a front on applications to obtain new merchant accounts. In August 2009,
10 I Works employees, using funds from I Works, opened one or more depository accounts in the
11 name of Net Fit Trends, including an account at Zions Bank.

12 210. Defendants used Net Fit Trends to obtain one or more merchant accounts in the
13 name of various fictitious entities so that Defendants could continue to process credit and debit
14 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
15 bundled with core products sold by I Works's marketing partners and clients.

16 211. Net Fit Trends transacts or has transacted business in this District and throughout
17 the United States.

18 212. **Optimum Assistance, Inc.** ("Optimum Assistance"), a company incorporated in
19 Nevada in September 2009, uses a maildrop address at 963 Topsy Lane, Suite 306 #312, Carson
20 City, NV 89705. Defendant Scott Muir is the titular owner and officer of Optimum Assistance.

21 213. Optimum Assistance is one of the shell corporations that J. Johnson and I Works
22 established to act as a front on applications to obtain new merchant accounts. In October 2009, a
23 depository account titled in the name of Optimum Assistance was opened at the Town & Country
24 Bank using funds from xCel Processing, another Shell Company. Optimum Assistance's bank
25 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
26 84770.

1 214. Defendants used Optimum Assistance to obtain merchant accounts in the name of
2 various fictitious entities so that Defendants could continue to process credit and debit card
3 charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
4 bundled with core products sold by I Works's marketing partners and clients.

5 215. Optimum Assistance transacts or has transacted business in this District and
6 throughout the United States.

7 216. **Power Processing, Inc.** ("Power Processing"), a company incorporated in
8 Oklahoma in October 2009, uses a maildrop address at 7380 South Olympia Avenue, Box #304,
9 Tulsa, OK 74132. Defendant Kevin Pilon is the titular owner and officer of Power Processing.

10 217. Power Processing is one of the shell corporations that J. Johnson and I Works
11 established to act as a front on applications to obtain new merchant accounts. In November 2009,
12 I Works employees, using funds from I Works, opened one or more depository accounts in the
13 name of Power Processing, including an account at SunFirst Bank. Power Processing's bank
14 statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT
15 84770.

16 218. Defendants used Power Processing to obtain one or more merchant accounts in the
17 name of various fictitious entities so that Defendants could continue to process credit and debit
18 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
19 bundled with core products sold by I Works's marketing partners and clients.

20 219. Power Processing transacts or has transacted business in this District and
21 throughout the United States.

22 220. **Premier Performance, Inc.** ("Premier Performance"), a company incorporated in
23 New York in August 2009, uses a maildrop address at 245 Eighth Avenue, Box #228, New York,
24 NY 10011. Defendant Loyd Johnston is the titular owner and officer of Net Business Success.

25 221. Premier Performance is one of the shell corporations that J. Johnson and I Works
26 established to act as a front on applications to obtain new merchant accounts. In August 2009,
27 I Works employees, using funds from I Works, opened one or more depository accounts in the
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1 name of Premier Processing, including an account at The Village Bank. Premier Performance's
2 bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George,
3 UT 84770.

4 222. Defendants used Premier Performance to obtain one or more merchant accounts in
5 the name of various fictitious entities so that Defendants could continue to process credit and
6 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
7 Upsells bundled with core products sold by I Works's marketing partners and clients.

8 223. Premier Performance transacts or has transacted business in this District and
9 throughout the United States.

10 224. **Pro Internet Services, Inc.** ("Pro Internet Services"), a company incorporated in
11 New York in March 2009, uses a maildrop address at 331 West 57th Street, Box #183, New York,
12 NY 10019. Defendant Loyd Johnston is the titular owner and officer of Pro Internet Services.

13 225. Pro Internet Services is one of the shell corporations that J. Johnson and I Works
14 established to act as a front on applications to obtain new merchant accounts. In August 2009,
15 I Works employees, using funds from I Works, opened one or more depository accounts in the
16 name of Pro Internet Services. Pro Internet Services's bank statements are sent to I Works's
17 headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

18 226. Defendants used Pro Internet Services to obtain one or more merchant accounts in
19 the name of various fictitious entities so that Defendants could continue to process credit and
20 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
21 Upsells bundled with core products sold by I Works's marketing partners and clients.

22 227. Pro Internet Services transacts or has transacted business in this District and
23 throughout the United States.

24 228. **Razor Processing, Inc.** ("Razor Processing"), a company incorporated in
25 California in June 2009, uses a maildrop address at 20258 Highway 18, Suite 430 #418, Apple
26 Valley, CA 92307. Defendant Scott Muir is the titular owner and officer of Razor Processing.

1 229. Razor Processing is one of the shell corporations that J. Johnson and I Works
2 established to act as a front on applications to obtain new merchant accounts. In July 2009, a
3 depository account titled in the name of Razor Processing was opened at the Town & Country
4 Bank using funds from xCel Processing, another Shell Company. Razor Processing's bank
5 statements are sent to I Works' headquarters at 249 East Tabernacle, Suite 200, St. George, UT
6 84770.

7 230. Defendants used Razor Processing to obtain one or more merchant accounts in the
8 name of various fictitious entities so that Defendants could continue to process credit and debit
9 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
10 bundled with core products sold by I Works's marketing partners and clients.

11 231. Razor Processing transacts or has transacted business in this District and
12 throughout the United States.

13 232. **Rebate Deals, Inc.** ("Rebate Deals"), a company incorporated in Nevada in June
14 2009, uses a maildrop address at 4080 Paradise Road, Box #15-904, Las Vegas, NV 89109.
15 Defendant Kevin Pilon is the titular owner and officer of Rebate Deals.

16 233. Rebate Deals is one of the shell corporations that J. Johnson and I Works
17 established to act as a front on applications to obtain new merchant accounts. In June 2009,
18 I Works employees, using funds from I Works, opened one or more depository accounts in the
19 name of Rebate Deals, including an account at Far West Bank. Rebate Deals's bank statements
20 are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

21 234. Defendants used Rebate Deals to obtain one or more merchant accounts in the
22 name of various fictitious entities so that Defendants could continue to process credit and debit
23 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
24 bundled with core products sold by I Works's marketing partners and clients.

25 235. Rebate Deals transacts or has transacted business in this District and throughout
26 the United States.

1 236. **Revive Marketing, Inc.** (“Revive Marketing”), a company incorporated in
2 Nevada in 2009, uses a maildrop address at 561 Keystone Avenue, Box #301, Reno, NV 89503.
3 Defendant Loyd Johnston is the titular owner and officer of Revive Marketing.

4 237. Revive Marketing is one of the shell corporations that J. Johnson and I Works
5 established to act as a front on applications to obtain new merchant accounts. In September 2009,
6 I Works employees, using funds from I Works, opened one or more depository accounts in the
7 name of Revive Marketing, including an account at Town & Country Bank. Revive Marketing’s
8 bank statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George,
9 UT 84770.

10 238. Defendants used Revive Marketing to obtain one or more merchant accounts in the
11 name of various fictitious entities so that Defendants could continue to process credit and debit
12 card charges for I Works’s sale of core products and Upsells, many of which are Forced Upsells
13 bundled with core products sold by I Works’s marketing partners and clients.

14 239. Revive Marketing transacts or has transacted business in this District and
15 throughout the United States.

16 240. **Simcor Marketing, Inc.** (“Simcor Marketing”), a company incorporated in
17 Nevada in September 2009, uses a maildrop address at 8550 West Desert Inn Road, Suite 102-
18 379, Las Vegas, NV 89117. Defendant Scott Muir is the titular owner and officer of Simcor
19 Marketing.

20 241. Simcor Marketing is one of the shell corporations that J. Johnson and I Works
21 established to act as a front on applications to obtain new merchant accounts. In September 2009,
22 I Works employees, using funds from I Works, opened one or more depository accounts in the
23 name of Simcor Marketing, including an account at Town & Country Bank. Simcor Marketing’s
24 bank statements are sent to I Works’s headquarters at 249 East Tabernacle, Suite 200, St. George,
25 UT 84770.

26 242. Defendants used Simcor Marketing to obtain one or more merchant accounts in the
27 name of various fictitious entities so that Defendants could continue to process credit and debit
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1 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
2 bundled with core products sold by I Works's marketing partners and clients.

3 243. Simcor Marketing transacts or has transacted business in this District and
4 throughout the United States.

5 244. **Summit Processing, Inc.** ("Summit Processing"), a company incorporated in
6 Nevada in September 2009, uses a maildrop address at 9 Retail Road, Suite 8 Box #438, Dayton,
7 NV 89403. Defendant Loyd Johnston is the titular owner and officer of Summit Processing.

8 245. Summit Processing is one of the shell corporations that J. Johnson and I Works
9 established to act as a front on applications to obtain new merchant accounts. In September 2009,
10 I Works employees, using funds from I Works, opened one or more depository accounts in the
11 name of Summit Processing, including an account at Town & Country Bank. Summit
12 Processing's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite
13 200, St. George, UT 84770.

14 246. Defendants used Summit Processing to obtain one or more merchant accounts in
15 the name of various fictitious entities so that Defendants could continue to process credit and
16 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
17 Upsells bundled with core products sold by I Works's marketing partners and clients.

18 247. Summit Processing transacts or has transacted business in this District and
19 throughout the United States.

20 248. **The Net Success, Inc.** ("The Net Success"), a company incorporated in Nevada in
21 July 2009, uses a maildrop address at 59 Damonte Ranch Parkway, Suite B-289, Reno, NV
22 89521. Defendant Kevin Pilon is the titular owner and officer of The Net Success.

23 249. The Net Success is one of the shell corporations that J. Johnson and I Works
24 established to act as a front on applications to obtain new merchant accounts. In July 2009,
25 I Works employees, using funds from I Works, opened one or more depository accounts in the
26 name of The Net Success, including an account at Zions Bank.

1 250. Defendants used The Net Success to obtain one or more merchant accounts in the
2 name of various fictitious entities so that Defendants could continue to process credit and debit
3 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
4 bundled with core products sold by I Works's marketing partners and clients.

5 251. The Net Success transacts or has transacted business in this District and
6 throughout the United States.

7 252. **Tranfirst, Inc.** ("Tranfirst"), a company incorporated in Delaware in August 2009,
8 uses a maildrop address at 4142 Olgtown Stranton Road, Box #614, Newark, DE 19713.
9 Defendant Loyd Johnston is the titular owner and officer of Tranfirst.

10 253. Tranfirst is one of the shell corporations that J. Johnson and I Works established to
11 act as a front on applications to obtain new merchant accounts. In October 2009, I Works
12 employees, using funds from I Works, opened one or more depository accounts in the name of
13 Tranfirst, including an account at Town & Country Bank. Tranfirst's bank statements are sent to
14 I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

15 254. Defendants used Tranfirst to obtain one or more merchant accounts in the name of
16 various fictitious entities so that Defendants could continue to process credit and debit card
17 charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
18 bundled with core products sold by I Works's marketing partners and clients.

19 255. Tranfirst transacts or has transacted business in this District and throughout the
20 United States.

21 256. **Tran Voyage, Inc.** ("Tran Voyage"), a company incorporated in Delaware in
22 November 2009, uses a maildrop address at 18766 John J. Williams Highway, PMB #331,
23 Rehoboth, DE 19971. Defendant Loyd Johnston is the titular owner and officer of Tran Voyage.

24 257. Tran Voyage is one of the shell corporations that J. Johnson and I Works
25 established to act as a front on applications to obtain new merchant accounts. In December 2009,
26 a depository account titled in the name of Tran Voyage was opened at SunFirst Bank using funds
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1 from Power Processing, another Shell Company. Tran Voyage's bank statements are sent to
2 I Works's headquarters at 249 East Tabernacle, Suite 200, St. George, UT 84770.

3 258. Defendants used Tran Voyage to obtain merchant accounts in the name of various
4 fictitious entities so that Defendants could continue to process credit and debit card charges for
5 I Works's sale of core products and Upsells, many of which are Forced Upsells bundled with core
6 products sold by I Works's marketing partners and clients.

7 259. Tran Voyage transacts or has transacted business in this District and throughout
8 the United States.

9 260. **Unlimited Processing, Inc.** ("Unlimited Processing"), a company incorporated in
10 New York in July 2009, uses a maildrop address at 111 East 14th Street, Box #320, New York,
11 NY 10003. Defendant Loyd Johnston is the titular owner and officer of Unlimited Processing.

12 261. Unlimited Processing is one of the shell corporations that J. Johnson and I Works
13 established to act as a front on applications to obtain new merchant accounts. In August 2009,
14 I Works employees, using funds from I Works, opened one or more depository accounts in the
15 name of Unlimited Processing, including an account at The Village Bank. Unlimited
16 Processing's bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite
17 200, St. George, UT 84770.

18 262. Defendants used Unlimited Processing to obtain one or more merchant accounts in
19 the name of various fictitious entities so that Defendants could continue to process credit and
20 debit card charges for I Works's sale of core products and Upsells, many of which are Forced
21 Upsells bundled with core products sold by I Works's marketing partners and clients.

22 263. Unlimited Processing transacts or has transacted business in this District and
23 throughout the United States.

24 264. **xCel Processing, Inc.** ("xCel Processing"), a company incorporated in California
25 in June 2009, uses a maildrop address at 12127 Mall Boulevard, Suite A-323, Victorville, CA
26 92392. Defendant Kevin Pilon is the titular owner and officer xCel Processing.

1 265. xCel Processing is one of the shell corporations that J. Johnson and I Works
2 established to act as a front on applications to obtain new merchant accounts. In July 2009,
3 I Works employees, using funds from I Works, opened one or more depository accounts in the
4 name of xCel Processing, including an account at Town & Country Bank. xCel Processing's
5 bank statements are sent to I Works's headquarters at 249 East Tabernacle, Suite 200, St. George,
6 UT 84770.

7 266. Defendants used xCel Processing to obtain one or more merchant accounts in the
8 name of various fictitious entities so that Defendants could continue to process credit and debit
9 card charges for I Works's sale of core products and Upsells, many of which are Forced Upsells
10 bundled with core products sold by I Works's marketing partners and clients.

11 267. Xcel Processing transacts or has transacted business in this District and throughout
12 the United States.

13 268. The Defendants described in Paragraphs 63 through 266 of this Complaint
14 collectively are referred to as the "**Shell Companies.**"

15 269. I Works, Anthon, Cloud Nine, CPA Upsell, Elite Debit, Employee Plus, Internet
16 Economy, Market Funding, Network Agenda, Success Marketing and the Shell Companies
17 collectively are referred to as the "**Corporate Defendants**" or the "**I Works Enterprise.**"

18 ***The Individual Defendants***

19 270. **Jeremy Johnson** ("J. Johnson") is the sole owner and officer of Corporate
20 Defendants I Works, Cloud Nine, CPA Upsell, Elite Debit, Internet Economy, Market Funding,
21 and Success Marketing, a member and manager of Corporate Defendant Network Agenda, and
22 the *de facto* principal behind the Shell Companies that he established, using I Works employees
23 and business associates, to act as fronts for I Works. J. Johnson is the mastermind behind the I
24 Works Enterprise.

25 271. J. Johnson hires and supervises the managers working at his companies. He has
26 the authority to approve the websites offering the products sold by I Works. He signs legal
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1 documents on behalf of I Works, including contracts with marketing partners and network
2 marketing groups, court settlements, and corporate resolutions.

3 272. On behalf of I Works, J. Johnson used various Payment Processors, including First
4 Data, ECHO, Global Payment Systems, Litle & Co., Moneris, Payment Tech, Trident, and Vital,
5 as well as several Independent Sales Organizations (“ISOs”), including CardFlex, RDK, Inc.,
6 Merchant eSolutions, Pivotal Payments, PowerPay, and Swipe Merchant Solutions, which act as
7 sales agents for the Payment Processors and the merchant banks. J. Johnson and I Works worked
8 with these Payment Processors and ISOs to obtain numerous merchant accounts at various
9 merchant banks, including Wells Fargo, N.A., HSBC Bank USA, First Regional Bank, Harris
10 National Association, and Columbus Bank and Trust Company. Defendants used these accounts
11 with the Payment Processors and merchant banks to process the credit and debit card charges for
12 I Works’s sale of core products and Upsells.

13 273. As described in detail below, after the banks began to terminate the merchant
14 accounts in the name of I Works or the other Corporate Defendants where J. Johnson was listed
15 as an officer, J. Johnson directed I Works’s employees to create numerous corporations to act as
16 fronts on new merchant account applications so that Defendants could continue to process the
17 credit and debit card charges for I Works’s sale of core products and Upsells. The straw-figure
18 principals of these Shell Companies are or were I Works employees or J. Johnson’s business
19 associates. The only purpose of these Shell Companies was to obtain merchant accounts in their
20 own names because banks would no longer open merchant accounts in the name of I Works or
21 with J. Johnson listed as the principal due to the negative history associated with their earlier
22 merchant accounts, including the high chargeback rates, the more than \$2.8 million in chargeback
23 fines paid by I Works and the other J. Johnson-owned Corporate Defendants, and the numerous
24 terminated merchant accounts. Jeremy Johnson has directed at least one Shell Company to pay
25 his personal income taxes.

1 274. J. Johnson also created companies, including Corporate Defendant Elite Debit, that
2 use remotely-created payment orders to debit consumers' bank accounts for I Works's sale of
3 core products and Upsells.

4 275. J. Johnson has signatory authority over numerous accounts at financial institutions
5 that contain funds from I Works's sale of core products and Upsells.

6 276. Since 2006, J. Johnson has personally received more than \$48 million in
7 distributions and salary from the Corporate Defendants.

8 277. J. Johnson received reports from the I Works call centers about consumer
9 complaints, and communications from Payment Processors, VISA, MasterCard, and others about
10 the high level of chargebacks, related to I Works's marketing of its core products and Upsells.
11 Chargeback fines totaling more than \$2 million were levied by merchant banks against Johnson's
12 companies, including Defendants I Works, Internet Economy, and Market Funding.

13 278. At all times material to this Complaint, acting alone or in concert with others,
14 J. Johnson has formulated, directed, controlled, had the authority to control, or participated in the
15 acts and practices of I Works and/or one or more of the Corporate Defendants named herein,
16 including the acts and practices set forth in this Complaint.

17 279. J. Johnson transacts or has transacted business in this District and throughout the
18 United States in connection with the matters alleged herein.

19 280. **Duane Fielding** ("Fielding") is a member and manager of Defendant Network
20 Agenda and the sole owner and officer of Defendant Anthon. Both companies are located at
21 I Works's headquarters at 249 East Tabernacle, St. George, UT 84770.

22 281. In June 2008, Fielding signed an agreement with the Payment Processor Litle &
23 Co. in order to obtain merchant accounts on behalf of Defendant Anthon. On behalf of I Works,
24 Fielding obtained merchant accounts in the names of Network Agenda and Office Assistant so
25 that Defendants could process the credit and debit card charges for I Works's sale of core
26 products and Upsells. These accounts incurred such excessive chargebacks that Fielding had to
27 submit Chargeback Reduction Plans to Payment Processors on behalf of Network Agenda.

1 Chargeback Reduction Plans set forth the reasons for the excessive chargebacks and outline the
2 steps that will be taken to reduce the chargeback rates.

3 282. Fielding has signatory authority over bank accounts titled in the name of Anthon
4 and Network Agenda, which accounts received funds from I Works directly, and/or contain funds
5 from I Works's sale of core products and Upsells.

6 283. Fielding received reports from the I Works call centers about consumer
7 complaints, and communications from Payment Processors, VISA, MasterCard, and others about
8 the high level of chargebacks, related to I Works's marketing of its core products and Upsells.

9 284. At all times material to this Complaint, acting alone or in concert with others,
10 Fielding has formulated, directed, controlled, had the authority to control, or participated in the
11 acts and practices of I Works, Anthon, Network Agenda, and/or one or more of the Corporate
12 Defendants named herein, including the acts and practices set forth in this Complaint.

13 285. Fielding transacts or has transacted business in this District and throughout the
14 United States in connection with the matters alleged herein.

15 286. **Andy Johnson** ("A. Johnson"), J. Johnson's brother, is the manager of the
16 Research and Development department at I Works. As part of his official duties at I Works, A.
17 Johnson created, or arranged for the creation of, and manages, several products, including Rebate
18 Millionaire and Cost Smashers, which I Works markets and sells directly and through its
19 marketing partners and clients.

20 287. A. Johnson is the titular owner and officer of at least three defendant Shell
21 Companies, including Funding Success, Hooper Processing, and Internet Fitness, that I Works
22 and J. Johnson established to act as fronts on applications to obtain new merchant accounts.
23 A. Johnson also was, during at least part of the time period relevant to this Complaint, the titular
24 owner of Defendant xCel Processing, one of the defendant Shell Companies.

25 288. On behalf of I Works, A. Johnson obtained merchant accounts under the names of
26 several Shell Companies, including Defendants Funding Success and xCel Processing, so that
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1 Defendants could continue to process the credit and debit card charges for I Works's sale of core
2 products and Upsells.

3 289. A. Johnson has signatory authority over bank accounts titled in the name of
4 Defendants Funding Success and xCel Processing, as well as over bank accounts titled in the
5 name of other Shell Companies, which accounts received funds from I Works directly, and/or
6 contain funds from I Works's sale of core products and Upsells.

7 290. As a manager at I Works, A. Johnson received information regarding the high
8 number of consumer complaints and chargebacks related to I Works's marketing of its core
9 products and Upsells.

10 291. At all times material to this Complaint, acting alone or in concert with others,
11 A. Johnson has formulated, directed, controlled, had the authority to control, or participated in the
12 acts and practices of I Works and/or one or more of the Corporate Defendants named herein,
13 including the acts and practices set forth in this Complaint.

14 292. A. Johnson transacts or has transacted business in this District and throughout the
15 United States in connection with the matters alleged herein.

16 293. **Lloyd Johnston** ("Johnston") is the manager of the Merchant Account department
17 at I Works.

18 294. In that role, Johnston manages the relationships with the Payment Processors and
19 banks that I Works uses or used to process credit and debit card charges for I Works's sale of core
20 products and Upsells. Johnston's email address, loyd@iworks.com, is the contact on numerous
21 merchant account applications submitted on behalf of one or more of the Corporate Defendants.
22 Johnston sent Chargeback Reduction Plans on behalf of one or more Corporate Defendants,
23 including the Shell Companies, to Payment Processors.

24 295. Johnston has the authority to hire, and has hired, I Works employees.

25 296. Johnston has opened maildrops in various states at which complaints about
26 I Works's marketing of its core products and Upsells are received and then forwarded to
27 I Works's headquarters in St. George, Utah. Johnston has used a business credit card to pay the
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1 rental fee for at least 50 maildrops in 13 states used by the I Works Enterprise between August
2 2009 and April 2010.

3 297. Johnston is the titular owner and officer of at least 15 Shell Companies that
4 I Works and J. Johnson established to act as fronts on applications to obtain new merchant
5 accounts. These Shell Companies include Defendants Blue Streak Processing, Business First,
6 Cold Bay Media, Ebusiness Success, Ecom Success, Money Harvest, Monroe Processing, Net
7 Commerce, Premier Performance, Pro Internet Services, Revive Marketing, Summit Processing,
8 Tranfirst, Tran Voyage, and Unlimited Processing.

9 298. On behalf of I Works, Johnston obtained one or more merchant accounts in the
10 name of numerous Shell Companies so that Defendants could continue to process the credit and
11 debit card charges for I Works's sale of core products and Upsells.

12 299. Johnston has signatory authority over bank accounts titled in the name of various
13 Shell Companies that received funds from I Works directly, and/or contain funds from I Works's
14 sale of core products and Upsells.

15 300. Johnston received reports from the I Works call centers about consumer
16 complaints, and communications from Payment Processors, VISA, MasterCard, and others about
17 the high level of chargebacks, related to I Works's marketing of its core products and Upsells.

18 301. At all times material to this Complaint, acting alone or in concert with others,
19 Johnston has formulated, directed, controlled, had the authority to control, or participated in the
20 acts and practices of I Works, and/or one or more of the business entities named herein, including
21 the acts and practices set forth in this Complaint.

22 302. Johnston transacts or has transacted business in this District and throughout the
23 United States in connection with the matters alleged herein.

24 303. **Scott Leavitt** ("Leavitt") is the Finance Manager for I Works.

25 304. In that role, Leavitt keeps the financial books of the I Works Enterprise. He
26 provides payroll and accounting services to I Works through Defendant Employee Plus, and
27 another company, Leavitt, Musgrave & Associates, both of which Leavitt owns.
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1 305. On behalf of I Works, Leavitt obtained one or more merchant accounts in the name
2 of Employee Plus d/b/a Grant Search Assistant so that Defendants could continue to process the
3 credit and debit card charges for I Works's sale of core products and Upsells.

4 306. Leavitt communicates with the Payment Processors and banks I Works uses or
5 used to process sales for its core products and Upsells.

6 307. Leavitt has signatory authority over more than 90 bank accounts titled in the name
7 of various Corporate Defendants. These accounts received funds from I Works directly and/or
8 contain funds from I Works's sale of core products and Upsells. Leavitt's signature appears on
9 thousands of checks written on behalf of the Corporate Defendants and he also arranges for the
10 electronic transfer of funds from the Shell Companies to I Works and vice-versa.

11 308. Leavitt received reports from the I Works call centers about consumer complaints,
12 and communications from Payment Processors, VISA, MasterCard, and others about the high
13 level of chargebacks, related to I Works's marketing of its core products and Upsells. His
14 company, Employee Plus, paid fines to its processing banks because of high chargeback levels.
15 As the Finance Manager, Leavitt was in a position to see the bank statements reflecting the
16 thousands of chargebacks associated with I Works's sale of core products and Upsells.

17 309. At all times material to this Complaint, acting alone or in concert with others,
18 Leavitt has formulated, directed, controlled, had the authority to control, or participated in the
19 acts and practices of I Works, Employee Plus, and/or one or more of the other business entities
20 named herein, including the acts and practices set forth in this Complaint.

21 310. Leavitt transacts or has transacted business in this District and throughout the
22 United States in connection with the matters alleged herein.

23 311. **Scott Muir** ("Muir"), Jeremy and Andy Johnson's uncle, is a former employee of
24 I Works and is currently employed by BadCustomer.com, an affiliate company of I Works. Muir
25 is the titular owner and officer of at least 12 Shell Companies that I Works and J. Johnson
26 established to act as fronts on applications to obtain new merchant accounts. These Shell
27 Companies include Big Bucks Pro, Blue Net Progress, Bolt Marketing, Business Loan Success,
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1 CS Processing, GGL Rewards, Highlight Marketing, Mist Marketing, Net Discounts, Optimum
2 Assistance, Razor Processing, and Simcor Processing.

3 312. On behalf of I Works, Muir obtained merchant accounts in the name of one or
4 more of the Shell Companies so that Defendants could continue to process the credit and debit
5 card charges for I Works's sale of core products and Upsells.

6 313. Muir has signatory authority over at least 12 accounts at three different banks, all
7 of which are titled in the name of Shell Companies. These accounts received funds from I Works
8 directly and/or contain funds from I Works's sale of core products and Upsells.

9 314. As a former employee of I Works, and through his current work for
10 BadCustomer.com, Defendants' Internet blacklist of consumers who have sought chargebacks of
11 Defendants' charges and debits, Muir learned of the high level of chargebacks related to
12 I Works's marketing of its core products and Upsells. Moreover, some of the bank accounts over
13 which Muir has signatory authority received large numbers of debits because of chargebacks.

14 315. At all times material to this Complaint, acting alone or in concert with others, Muir
15 has formulated, directed, controlled, had the authority to control, or participated in the acts and
16 practices of I Works and/or one or more of the other business entities named herein, including the
17 acts and practices set forth in this Complaint.

18 316. Muir transacts or has transacted business in this District and throughout the United
19 States in connection with the matters alleged herein.

20 317. **Bryce Payne** ("Payne") is the current General Manager of I Works.

21 318. Payne has authority to hire and fire persons who work for I Works.

22 319. Payne has signed contracts on behalf of I Works.

23 320. Payne has the authority to approve websites offering the products I Works sells.

24 321. Payne is the titular owner and officer of Defendant JRB Media, one of the Shell
25 Companies that I Works and J. Johnson established to act as a front on applications to obtain new
26 merchant accounts.

1 322. On behalf of I Works, Payne obtained one or more merchants accounts in the name
2 of JRB Media so that Defendants could continue to process the credit and debit card charges for
3 I Works' sale of core products and Upsells.

4 323. Payne has signatory authority over a bank account titled in the name of Defendant
5 JRB Media, which account received funds from I Works directly and/or contains funds from
6 I Works's sale of core products and Upsells.

7 324. Payne received reports from the I Works call centers about consumer complaints,
8 and communications from Payment Processors, VISA, MasterCard, and others about the high
9 level of chargebacks, related to I Works's marketing of its core products and Upsells.

10 325. At all times material to this Complaint, acting alone or in concert with others,
11 Payne has formulated, directed, controlled, had the authority to control, or participated in the acts
12 and practices of I Works and/or one or more of the other business entities named herein, including
13 the acts and practices set forth in this Complaint.

14 326. Payne transacts or has transacted business in this District and throughout the
15 United States in connection with the matters alleged herein.

16 327. **Kevin Pilon** ("Pilon") works at I Works where he facilitates I Works's credit and
17 debit card processing for I Works's sale of core products and Upsells. He is part of the Merchant
18 Account department and is or was responsible for working with Payment Processors.

19 328. Pilon is the titular owner and officer of at least 16 Shell Companies that I Works
20 and J. Johnson established to act as fronts on applications to obtain merchant accounts. These
21 Shell Companies include Bottom Dollar, Bumble Marketing, Costnet Discounts, Cutting Edge
22 Processing, Ebusiness First, Excess Net Success, Fiscal Fidelity, Fitness Processing, GG
23 Processing, Internet Business Source, Net Business Success, Net Fit Trends, Power Processing,
24 Rebate Deals, The Net Success, and xCel Processing.

25 329. Pilon has opened maildrops in various states at which complaints about I Works's
26 marketing of core products and Upsells are received, which are then forwarded to I Works's
27 headquarters in St. George, Utah. Pilon has used a business credit card to pay the rental fee for at
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1 least 27 maildrops in nine states used by the I Works Enterprise between August 2009 and May
2 2010.

3 330. Pilon is the titular owner and officer of Shell Company Bottom Dollar which does
4 business as BadCustomer.com. In connection with BadCustomer.com, Pilon works closely with
5 Defendant Jeremy Johnson.

6 331. On behalf of I Works, Pilon obtained merchant accounts in the name of one or
7 more Shell Companies so that Defendants could continue to process the credit and debit card
8 charges for I Works's sale of core products and Upsells.

9 332. Pilon has signatory authority over bank accounts titled in the name of numerous
10 Shell Companies, which accounts received funds from I Works directly and/or contain funds from
11 I Works's sale of core products and Upsells.

12 333. Pilon, as a member of the Merchant Account department, attended meetings at
13 which the high number of chargebacks related to I Works's marketing of its core products and
14 Upsells was discussed. Pilon received reports from the I Works call centers about consumer
15 complaints, and communications from Payment Processors, VISA, MasterCard, and others about
16 the high level of chargebacks, related to I Works's marketing of its core products and Upsells.

17 334. At all times material to this Complaint, acting alone or in concert with others,
18 Pilon has formulated, directed, controlled, had the authority to control, or participated in the acts
19 and practices of I Works and/or one or more of the other business entities named herein, including
20 the acts and practices set forth in this Complaint.

21 335. Pilon transacts or has transacted business in this District and throughout the United
22 States in connection with the matters alleged herein.

23 336. **Ryan Riddle** ("Riddle") was, until November 2009, the General Manager of
24 I Works.

25 337. While General Manager, Riddle exercised supervisory authority over I Works
26 employees. Riddle hired and fired I Works employees. Riddle supervised managers and sent
27 directions to employees via email and otherwise.

1 338. Riddle approved websites offering the core products and Upsells sold by I Works.

2 339. Riddle entered into marketing and other contracts on behalf of I Works.

3 340. Riddle communicated with I Works's merchant banks and Payment Processors.

4 Riddle sent Progress Reports and Chargeback Reduction Plans on behalf of I Works to banks and
5 Payment Processors explaining the steps I Works was taking to decrease chargebacks.

6 341. Riddle responded to consumer complaints that were sent to I Works by various
7 state Attorneys General.

8 342. Riddle is also the titular owner and officer of Defendant DJM, one of the Shell
9 Companies that I Works and J. Johnson established to act as a front on applications to obtain new
10 merchant accounts. Riddle signed merchant account applications on behalf of DJM's various
11 fictitious entities.

12 343. Riddle has signatory authority over a bank account titled in the name of DJM,
13 which account received funds from I Works directly and/or contains funds from I Works's sale of
14 core products and Upsells.

15 344. Riddle received reports from the I Works call centers about consumer complaints,
16 and communications from Payment Processors, VISA, MasterCard, and others about the high
17 level of chargebacks, related to I Works's marketing of its core products and Upsells. He also
18 responded to State Attorneys Generals who forwarded hundreds of consumer complaints
19 regarding I Works's sale of core products and Upsells.

20 345. At all times material to this Complaint, acting alone or in concert with others, he
21 has formulated, directed, controlled, had the authority to control, or participated in the acts and
22 practices of I Works and/or one or more of the other business entities named herein, including the
23 acts and practices set forth in this Complaint.

24 346. Riddle transacts or has transacted business in this District and throughout the
25 United States in connection with the matters alleged herein.

26 347. **Terrason Spinks** ("Spinks") is a business associate of Jeremy Johnson. Spinks
27 has or had an office at I Works's headquarters at 249 East Tabernacle, St. George, UT.

348. Spinks obtains merchant accounts for the I Works Enterprise.

349. Spinks is the titular owner and officer of Jet Processing, a Shell Company that I Works and J. Johnson established to act as a front on applications to obtain new merchant accounts. Spinks purchased Jet Processing in 2009 from I Works and J. Johnson. Even after the sale, Jet Processing remains a part of the common enterprise.

350. Spinks submitted a Chargeback Reduction Plan to a processing bank on behalf of Defendant Jet Processing.

351. Spinks has signatory authority over at least six bank accounts in the name of Jet Processing, one or more of which received funds from I Works directly and/or contains funds from I Works's sale of core products and Upsells.

352. Spinks received reports from the I Works call centers about consumer complaints, and communications from Payment Processors, VISA, MasterCard, and others about the high level of chargebacks, related to I Works's marketing of its core products and Upsells.

353. At all times material to this Complaint, acting alone or in concert with others, Spinks has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of I Works and/or one or more of the other business entities named herein, including the acts and practices set forth in this Complaint.

354. Spinks transacts or has transacted business in this District and throughout the United States in connection with the matters alleged herein.

355. Fielding, A. Johnson, J. Johnson, Johnston, Leavitt, Muir, Payne, Pilon, Riddle, and Spinks are collectively referred to as “Individual Defendants.”

356. The Corporate and Individual Defendants are collectively referred to as “**Defendants.**”

COMMON ENTERPRISE

357. The Corporate Defendants have operated and functioned as a common enterprise while engaging in the unfair and deceptive acts and practices and other violations of law alleged in this Complaint. The Corporate Defendants have conducted the business practices through an

1 interrelated network of companies that have common control, ownership, officers, managers,
2 business functions, office locations, accounting and customer databases, web servers, and
3 products. The Corporate Defendants rely on unified advertising and a common marketing
4 scheme. J. Johnson and the other Individual Defendants have ignored corporate formalities in
5 setting up the Shell Companies, which are nothing more than fronts for I Works. Because the
6 Corporate Defendants have operated as a common enterprise, each of them is jointly and
7 severally liable for the acts and practices described in this Complaint. Individual Defendants
8 Fielding, A. Johnson, J. Johnson, Johnston, Leavitt, Muir, Payne, Pilon, Riddle, and Spinks have
9 formulated, directed, controlled, had the authority to control, or participated in the acts and
10 practices of one or more of the Corporate Defendants that comprise the I Works Enterprise.

11 **RELIEF DEFENDANTS**

12 358. Defendant J. Johnson has made or directed to be made numerous gratuitous
13 transfers of significant assets of the I Works Enterprise to his wife, parents, and companies they
14 own, control, or are titled in their names. The total assets of the I Works Enterprise that
15 defendant J. Johnson has caused to be transferred in this manner total at least \$22 million.

16 **Individual Relief Defendants**

17 359. Relief defendant **Sharla Johnson** is the spouse of defendant J. Johnson. Relief
18 defendant Sharla Johnson is the titular half-owner, along with defendant J. Johnson, of other
19 Relief defendants, including: Zibby, LLC; Zibby Flight Service, LLC; and Orange Cat
20 Investments, LLC, which as described below have received gratuitous transfers of significant
21 assets from the I Works Enterprise. Relief defendant Sharla Johnson resides in Utah.

22 360. In addition to funds defendant J. Johnson gratuitously transferred to Relief
23 defendants Zibby, LLC; Zibby Flight Service, LLC; and Orange Cat Investments, LLC, Relief
24 defendant Sharla Johnson has directly received individually or jointly with others, at least \$5
25 million in additional funds and/or property that can be traced directly to Defendants' deceptive
26 acts and practices and for which she has no legitimate claim.

27 361. For example:
28

- 1 a. On or about December 2, 2009, defendant J. Johnson gratuitously transferred the
2 title to his multi-million dollar, 20,000 square foot mansion located in St. George,
3 Utah (“Johnson Residence”) from Relief defendant Zibby to Relief defendant
4 Sharla Johnson via Quit Claim Deed. The transfer was recorded with the
5 Washington County Recorder’s Office on or about December 7, 2009;
- 6 b. On or about December 7, 2009, at the direction of defendant J. Johnson, Relief
7 defendant Sharla Johnson used the Johnson Residence to secure a \$3.1 million
8 home equity line of credit from Sunfirst Bank. Sunfirst Bank deducted fees related
9 to the \$3.1 million home equity line of credit from defendant Elite Debit’s reserve
10 account at Sunfirst bank; and
- 11 c. In 2009, defendant J. Johnson directed defendant Employee Plus to gratuitously
12 transfer at least \$118,764 to Relief defendant Sharla Johnson, even though Relief
13 defendant Sharla Johnson was neither employed by nor provided services or any
14 other consideration to defendant Employee Plus in exchange for these assets.

15 362. Relief defendant **Kerry Johnson** is defendant J. Johnson’s father. Relief
16 defendant Kerry Johnson, with his wife Relief defendant Barbara Johnson, own and manage
17 Relief defendants KB Family Limited Partnership and KV Electric, Inc., which as described
18 below have received gratuitous transfers of significant assets from the I Works Enterprise. Relief
19 defendant Kerry Johnson resides in Utah.

20 363. In addition to funds defendant J. Johnson gratuitously transferred to Relief
21 defendants KB Family Limited Partnership and KV Electric, Inc., Relief defendant Kerry Johnson
22 has directly received, individually or jointly with others, at least \$1.6 million in additional funds
23 and/or property that can be traced directly to Defendants’ deceptive acts and practices and for
24 which he has no legitimate claim.

25 364. For example:

- 26 a. On or about September 18, 2008, defendant J. Johnson gratuitously transferred
27 roughly one million dollars in silver bars that were purchased with proceeds of
28

1 Defendants' deceptive acts and practices to Kerry Johnson as a gift. According to
2 Relief defendant Kerry Johnson, in 2010, defendant J. Johnson and he exchanged
3 the bulky silver bars for their equivalent value in silver coins and small silver bars;
4 and

- 5 b. In 2009, defendant J. Johnson directed defendant Employee Plus to gratuitously
6 transfer at least \$697,500 to Relief defendant Kerry Johnson, even though Relief
7 defendant Kerry Johnson was neither employed by nor provided services or any
8 other consideration to defendant Employee Plus in exchange for these assets.

9 365. Relief defendant **Barbara Johnson** is J. Johnson's mother. Relief defendant
10 Barbara Johnson with her husband, Relief defendant Kerry Johnson, own and manage Relief
11 defendants KB Family Limited Partnership and KV Electric, Inc., which as described below have
12 received gratuitous transfers of significant assets from the I Works Enterprise. Relief defendant
13 Barbara Johnson resides in Utah.

14 366. In addition to funds defendant J. Johnson gratuitously transferred to Relief
15 defendants KB Family Limited Partnership and KV Electric, Inc., Relief defendant Barbara
16 Johnson has directly received, individually or jointly with others, at least \$77,500 in funds and/or
17 property that can be traced directly to Defendants' deceptive acts and practices for which she has
18 no legitimate claim. For example, in 2009, defendant J. Johnson directed defendant Employee
19 Plus to gratuitously transfer at least \$77,500 to Relief defendant Barbara Johnson, even though
20 Relief defendant Barbara Johnson was neither employed by nor provided services or any other
21 consideration to defendant Employee Plus in exchange for these assets.

22 **Corporate Relief Defendants**

23 367. Relief defendant **Orange Cat Investments, LLC** ("Orange Cat Investments"), is a
24 Utah limited liability company, located at 529 S. Woodsvew Circle, St. George, UT. Defendant
25 J. Johnson and Relief defendant Sharla Johnson are the managers and sole members of Relief
26 defendant Orange Cat Investments. Relief defendant Orange Cat Investments was organized
27 under Utah law in 2007.

1 368. Individually or jointly with others, Relief defendant Orange Cat Investments has
2 received funds and/or property that can be traced directly to Defendants' deceptive acts and
3 practices and for which it has no legitimate claim. For example, defendant I Works' records
4 show that between December 2007 and March 2010, defendant I Works gratuitously transferred
5 at least \$5,100,000 in funds and assets to Relief defendant Orange Cat Investments.

6 369. Relief defendant **Zibby, LLC** ("Zibby"), is a Utah limited liability company,
7 located at 529 S. Woodview Circle, St. George, UT. Defendant J. Johnson and Relief defendant
8 Sharla Johnson are the managers and sole members of Relief defendant Zibby. Relief defendant
9 Zibby was organized under Utah law in 2002.

10 370. Individually or jointly with others, Relief defendant Zibby has received funds
11 and/or property that can be traced directly to Defendants' deceptive acts and practices and for
12 which it has no legitimate claim. For example, since 2006, defendant I Works gratuitously
13 transferred more than \$13 million in aggregate funds to Relief defendant Zibby.

14 371. Relief defendant **Zibby Flight Service, LLC** ("Zibby Flight Service"), is a
15 Delaware limited liability company, located in St. George, UT. Defendant J. Johnson and Relief
16 defendant Sharla Johnson are the managers and sole members of Relief defendant Zibby Flight
17 Service. Relief defendant Zibby Flight Service was organized under Delaware law in 2002.

18 372. Individually or jointly with others, Relief defendant Zibby Flight Service has
19 received funds and/or property that can be traced directly to Defendants' deceptive acts and
20 practices and for which it has no legitimate claim. For example, between July 2007 and March
21 2010, defendant I Works gratuitously transferred at least \$2,495,000 to Relief defendant Zibby
22 Flight Service.

23 373. Relief defendant **KV Electric, Inc.** ("KV Electric"), is a Utah corporation, with a
24 corporate mailing address of 992 Westridge Drive, St. George, UT 84770. Relief defendants
25 Kerry Johnson and Barbara Johnson are the directors or officers of Relief defendant KV Electric.

374. Individually or jointly with others, Relief defendant KV Electric has received at least \$807,505.90 in funds and/or property that can be traced to Defendants' deceptive acts and practices and for which it has no legitimate claim.

375. For example, between January 30, 2008, and June 21, 2010, defendant J. Johnson caused at least \$807,505.90 to be gratuitously transferred from Relief defendant Zibby to Relief defendant KV Electric.

376. Relief defendant **KB Family Limited Partnership** (“KB Family Limited Partnership”) is a Utah limited partnership wholly-owned by Relief defendants Kerry and Barbara Johnson.

377. Individually or jointly with others, Relief defendant KB Family Limited Partnership has received at least \$1.75 million in funds and/or property that can be traced to Defendants' deceptive acts and practices and for which it has no legitimate claim. For example, in or about early March 2009, Relief defendant KB Family Limited Partnership deposited two checks of \$25,000 each drawn on a bank account in the name of defendant I Works and made payable to Relief defendant KB Family Limited Partnership.

378. Furthermore, on or about December 7, 2009, defendant J. Johnson caused Relief defendant Sharla Johnson to transfer \$1.7 million to Relief defendant KB Family Limited Partnership. The \$1.7 million included proceeds of the \$3.1 million home equity line of credit secured by the Johnson Residence discussed above, and funds from a reserve account ending in X485 at Sunfirst Bank in the name of defendant Elite Debit.

COMMERCE

379. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES***The Lures***

380. In numerous instances, consumers are drawn into Defendants' scheme through websites that trumpet the availability of government grants to pay personal expenses or websites that offer a money-making opportunity. Defendants offer information regarding grants and make-money opportunities, purportedly at a nominal cost of \$1.99 or \$2.99. Defendants fail to disclose or to disclose adequately that their offer includes a Negative Option Plan for an online membership; consumers who do not cancel their memberships within a short period of time will be billed a hefty one-time charge and enrolled in a continuity plan that will result in monthly recurring charges. Defendants also fail to disclose or to disclose adequately that they will charge consumers' credit cards or debit funds from their bank accounts recurring monthly fees for Forced Upsells - additional bundled products from which consumers cannot opt-out.

The Grant Lure

381. Defendants offer their grant product on hundreds of websites that tout the availability of government grants to pay personal expenses. These websites frequently represent that government grants are available to pay medical bills, start home businesses, for free healthcare, pay power bills, replace kitchen and bathroom faucets, fix up a home, or pay a mortgage.

382. One offer proclaims "Now It's Your Turn to Claim Government Grant Money." A different offer promises that "Finding Government Grant money has never been easier or quicker!"

383. Another offer hypes the billions of dollars available for "Personal Grants!" and encourages individuals to "claim your share of the millions of dollars in Grant Money Given Away Every Year!" According to this offer, "some of the Government Grants that have been funded" include "\$9,500 to pay medical bills," "\$50,000 for college," and "\$10,000 for free healthcare."

1 384. Other grant-related offers tell individuals they can use the “free” government
2 funding to “Start a Business,” “Expand Your Current Venture,” “Purchase Real Estate,” “Buy
3 Equipment,” “Pay Medical Bills,” “Start a Home Business,” and for “Free Healthcare.”

4 385. Defendants also use streaming video to convince consumers of the benefit of their
5 government grant product. For instance, when consumers visit the website entitled Grant Gold, a
6 male model appears at the bottom right hand corner of the website’s landing page and states,
7 among other things:

8 With your permission, I want to send you a grant CD which reveals how to get available
9 grants from the U.S. government. In it, you will discover countless ways to get something
10 back for your tax dollars. And if you respond now, I’ll send it to you for only the cost of
11 shipping. . . . For example, you may qualify for thousands of dollars to pay your
12 mortgage. Or even find money to live on while you start a business. You can receive
13 financial assistance for medical bills

14 386. Spam emails sent by Defendants and/or their agents mirror Defendants’ own
15 misrepresentations about their grant-related products. For example, an email promoting Grant
16 Funding Toolbox, using as an address a maildrop opened by J. Johnson and with a subject line
17 “Pres Obama want to give you Free Cash you could be Cashing your Federal Check In as little as
18 12 days,” promises that the grants are for people who need assistance “paying for bills, buying a
19 home, . . . or even helping raise children.” Another of Defendants’ Spam emails using the same
20 maildrop address and with a subject line “FREE CASH to help you get started!” proclaims that
21 “Our Grant Program Software” is waiting to help “Stop Forclosures”[sic] and “Pay Down Debt”
22 and asserts that “the government could have a check to you in as little as two weeks.” Yet
23 another Spam email using one of Defendants’ maildrop addresses in Nevada and with a subject
24 line “Government Funding Available” states that “Government money is readily available for
25 many reasons including: . . . Rent payment assistance, Bills . . . and Much Much More.”

26 387. Defendants’ other Spam emails include testimonials. For instance, an email from
27 with a subject line “Uncle Sam could give you up to \$25,000 - open to see how,” includes a
28 testimonial from a Silvia Henriquez stating that she did not have money to pay her electric bill or
feed her children and that she applied for a grant and received \$500.

1 388. Defendants provide their affiliates with ready-to-send emails that advertise the
2 Defendants' grant and money-making programs. The Defendants make these emails available on
3 a website for affiliates called the I Works Media Center. The emails include a default link to
4 ravenmediainc.com, an URL that is registered to an individual with an I Works email address. In
5 one of the emails, Defendants proclaim that "Every year, the government gives away MILLIONS
6 of dollars to people JUST LIKE YOU! Need FAST CASH to start a business, attend college, or
7 pay off bills?" And, another email states that consumers can use "FREE MONEY dolled [*sic*] out
8 by 1,400 government agencies" to "buy a new home, car, pay for college, medical bills, groceries,
9 bills, and more." A third email announces there are "THOUSANDS of dollars in FREE
10 Government grant money for the holidays!" and features a woman in a Santa Claus hat holding a
11 wad of hundred dollar bills.

12 389. Defendants have marketed their grant products under various names that invoke a
13 connection between their products and government grants, such as: Fed Grant USA, Federal
14 Grant Connection, Grant Stimulus Save, Govt Grant Connection, Fast Government Grants, Fast
15 Gov Grants.com, Get Government Dollars, Government Funding Solutions, and Gov Grant
16 Central. Defendants have also marketed their grant products through websites with names such
17 as: federalgovernmentgrantsolutions.com and availablefederalgrantsonline.com.

18 390. In fact, there are few, if any, government grants available to individual consumers.
19 In addition, contrary to Defendants' representations, government grants are not available to
20 individuals to pay personal expenses such as their mortgage, bills, Christmas presents, and
21 emergencies. Instead, most government grants are awarded to colleges, universities, and other
22 nonprofit organizations. Moreover, Defendants do not possess and rely upon a reasonable basis
23 to substantiate their representation that government grants are available to individuals for
24 personal expenses.

25 391. In many instances, Defendants also represent that consumers who provide their
26 names, addresses, telephone numbers, and credit or debit card information will be charged a
27 nominal shipping and handling fee to receive a CD and access to a website, which Defendants
28

1 manage, that contains information that will enable the consumer to find and obtain government
2 grants to pay personal expenses. A typical representation is: “Our program doesn’t just list
3 Grants, it walks you step-by-step through how to qualify, who to contact (including address
4 details) and many examples of how to get Government and Private Grants!” Yet another offer
5 represents that the grant product “contains valuable information you need to know about how and
6 where to access grant money that may be available. . . You’ll also have the tools and resources
7 necessary to find, apply for and secure this money.” A streaming video of a male model on a
8 grant website’s Order page, in the lower right hand corner, states, among other things, that the
9 online membership program:

10 walks you step by step through exactly how to qualify and who to contact. It includes all
11 required addresses and what to say to easily get the tax-free cash just sitting there waiting
12 for you. . . No matter who you are, rich or poor, black or white, employed or unemployed,
13 as long as you are a U.S. citizen, you can apply for funding faster than you ever dreamed
14 possible. Go ahead, request this CD today and get started on your path to finding and
15 applying for the funding you’re seeking.

16 392. In order to convince consumers they are likely to receive grants by using
17 Defendants’ grant product, in numerous instances Defendants include on their grant sites
18 testimonials from happy consumers who supposedly used the grant product to receive funds to fix
19 a car, pay utility bills, avoid foreclosure, buy Christmas presents, and pay for emergency
20 expenses. In doing so, Defendants represent that consumers who use the grant product are likely
21 to obtain grants such as those obtained by the happy consumers.

22 393. In fact, consumers are not likely to find and obtain grants using Defendants’ grant
23 product as there are few, if any, government grants for individuals to pay personal expenses.
24 Moreover, Defendants did not possess and rely upon a reasonable basis to substantiate their
25 representation that consumers are likely to find and obtain government grants for personal
26 expenses using the Defendants’ grant product.

27 394. Consumers are not likely to obtain grants such as those obtained by the consumers
28 in the testimonials. The individuals quoted in the testimonials received funds only from a
nonprofit organization funded wholly or partially by Defendants. Defendants provided payments
to approximately .04% of all consumers that Defendants’ billed for Defendants’ grant product.

1 The only manner in which Defendants add a caveat to their testimonials is by way of a small
 2 asterisk at the end of each testimonial. If consumers can even see the fine print at the bottom of
 3 the web page, they will only find Defendants' tiny disclosure that "Results May Vary," which
 4 does nothing to correct the representation that consumers using the grant product are likely to
 5 obtain grants such as those obtained by the happy consumers. Moreover, many of the sites
 6 contain one or more testimonials that are false or bogus.

7 *The Make-Money Opportunity Lure*

8 395. In numerous instances, Defendants lure consumers through websites that tout
 9 money-making opportunities that are likely to yield significant income. Their typical make-
 10 money website promises that consumers can generate large amounts of income via Internet search
 11 engine advertising on Google, through rebate programs and auctions on sites such as eBay, and
 12 by using new technologies, such as Twitter. Defendants offer information regarding the make-
 13 money opportunities, purportedly for a nominal fee of \$1.99 or \$2.99 for shipping and handling.
 14 As with the core grant product, consumers submit their billing information to pay the small fee.
 15 Having procured consumers' account information, Defendants immediately enroll their victims in
 16 Negative Option Plans for online memberships for both the core make-money product and for
 17 other unrelated products that are automatically bundled with the make-money product as Forced
 18 Upsells, and proceed to impose significant one-time and recurring charges.

19 396. Defendants' make-money websites represent that their product offers its members
 20 "Easy Money," and the opportunity to "[s]top living paycheck-to-paycheck." For example, an
 21 offer marketing Internet search engine opportunities proclaims that "Now ANYONE can learn
 22 how to earn \$200-\$943 per day or MORE on Google!" Another of Defendants' websites states
 23 that one can "learn how to make \$199 per day or more" with "our simple system" that has
 24 "everything you need to make guaranteed fast money on Google. Your cost + \$0."

25 397. Spam emails sent by Defendants' agents make the same claims. For instance,
 26 Raven Media using one of Defendants' maildrop addresses in Nevada and a subject line "Easy
 27 Money with Google," promises that "anyone can learn how to earn 200 - 943 per day or More!"
 28

1 398. The I Works Media Center includes ready-to-send emails with claims for
 2 Defendants' money-making products. For instance, one email states that "with this FREE kit,
 3 you can make up to \$500, \$1,000, even \$3,000 every month ONLINE!" Another email proclaims
 4 "My 'Growing Rich with Google' CD reveals how to Make extra income from home. Get your
 5 FREE copy today!"

6 399. By providing a specific range of money that the consumer will "learn to earn,"
 7 Defendants represent that the typical consumer who uses Defendants' money-making product can
 8 expect to achieve that level of income.

9 400. In fact, Defendants' make-money representations are false. Typical consumers
 10 who use Defendants' make-money products will not earn \$200-943 or more per day using
 11 Defendants' products. Moreover, Defendants did not possess and rely upon a reasonable basis to
 12 substantiate their representations that consumers can expect to earn these amounts per day.

13 ***The Promises That the Offers Are Free or Risk-Free***

14 401. In addition to extravagant claims about getting federal grants or substantial income
 15 via Internet search engine advertising, auctions, or other money-making products, Defendants
 16 further entice consumers by emphasizing that, except for a nominal fee of as little as \$1.99 or
 17 \$2.99 to cover the shipping and handling of a CD, what Defendants are offering is "free." Thus,
 18 large banners encourage consumers to "Order your FREE CD today" and "Get your FREE
 19 Software" that has information on how to receive government grants or make money. For
 20 instance, one of Defendants' money-making sites claims that "Our FREE CD shows how to beat
 21 the system." If Defendants make any reference to the Forced Upsells, they are referred to as
 22 bonus "gifts."

23 402. In order to reassure consumers and convince them to enter their billing information
 24 for the small amount, Defendants expressly assert that their free offers are "risk free." Typical
 25 representations by Defendants include: "Get Instant Access To Your Risk-Free Google
 26 Software . . ."; "Get Our Risk-Free Grant Software Kit"; "Information worth thousands of dollars!
 27 It's Yours Now RISK FREE!" and "Claim Your Risk-Free CD . . ."

403. To further emphasize the ostensibly free and risk-free nature of their offers, Defendants often include tables detailing that the consumer's TOTAL monetary outlay is only the nominal shipping and handling fee. Defendants' tables identify that all other items, including a CD with product information, access to online tutorials, and unlimited customer support, are free or are included with the payment of a nominal shipping and handling fee. Sometimes the tables include a reference to "bonus" products, which Defendants also list as free.

404. In many instances, Defendants attempt to create a sense of urgency. Defendants’ websites represent that only a few CDs are available, or that it is a “Limited Time Offer.” Furthermore, some of Defendants’ marketing websites actually incorporate a clock that counts down the number of minutes and seconds consumers have left to respond to Defendants’ offer.

405. In fact, Defendants' offers are not "free." Consumers who provide their billing information to pay a nominal fee are likely to be charged much more than the small fee because I Works charges additional recurring and other fees that are poorly disclosed, if at all, in tiny, hard-to-read print. Thus, consumers who agree to pay the small shipping and handling fee will be charged a one-time fee of as much as \$189 and then monthly recurring fees of as much as \$59.95 if consumers do not cancel within as few as three days. Nor are the offers "risk-free." To the contrary, Defendants forcibly enroll consumers in Upsell memberships they know nothing about and that they never intended to order, for which Defendants impose additional monthly charges or debits of as much as \$39.97. In short, because of Defendants' practices, consumers run the risk of not understanding the true nature of the transaction: enrollment in a Negative Option Plan for an online membership that requires consumers to take affirmative action to cancel memberships most consumers did not know they had.

Hiding the Terms of the Trial Memberships and Forced Upsells

406. In many instances, consumers are unaware that when they provide their billing information and agree to pay a nominal fee for shipping and handling, Defendants immediately enter consumers in a Negative Option Plan that, if not cancelled within a trial period as short as

1 three days, converts to a paying membership with a one-time fee of as much as \$189 and then
2 monthly recurring fees of as much as \$59.95.

3 407. In most instances, in addition to the core product advertised on Defendants'
4 website, Defendants also automatically enroll consumers in one or more of Defendants' other,
5 unrelated membership programs without giving consumers the option of unchecking a box or
6 using other means to decline the Forced Upsell. The products Defendants bundle with their core
7 products as Forced Upsells include: Express Business Funding, a small business alternative-
8 funding online membership; (2) Fit Factory, an online health/weight-loss site; (3) Cost Smashers,
9 a savings club; (4) Network Agenda, a small business, Internet-based scheduling tool; (5) Living
10 Lean, an online weight-loss program; and (6) Rebate Millionaire, a program that teaches people
11 how to make money buying and selling items on action sites such as eBay. Defendants also use
12 its two main core products, the grant product and the make-money product, as Forced Upsells,
13 enrolling consumers who provided Defendants with their billing information to pay the small fee
14 for Defendants' grant product in its make-money product and vice-versa. Each of these Forced
15 Upsells imposes additional recurring monthly charges or debits of as much as \$39.97 to the
16 consumer's account.

17 408. Consumers are unaware that Defendants will use their billing information to assess
18 these high fees for both the core product and the Forced Upsells. Consumers often are unaware
19 they have been enrolled in trial memberships because Defendants bury the terms of their true
20 offers in tiny, hard-to-read print that is overshadowed by the extravagant promises that consumers
21 can use their government grants for personal expenses or make lots of money through
22 Defendants' supposedly free and risk-free offers.

23 409. In many cases, any disclosures about the Defendants' Forced Upsells are hidden in
24 the middle of the tiny cramped text about the core product. In other instances, the Upsell
25 disclosures appear only in a small boxes at the bottom of the Order page, well below the
26 "Submit" button. In many instances, the description of the Upsell as a "bonus" product lacks any
27 cost or cancellation information.
28

1 410. Tiny hyperlinks at the bottom of various pages on Defendants' marketing
2 websites, if they function, may connect to a lengthy Terms and Conditions page full of obtuse
3 legalese, only one small part of which mentions trial memberships, bonus products, cancellation
4 requirements, and costs. In some instances, there is convoluted language that the consumer has
5 agreed to a one-time fee of as much as \$189 and then recurring monthly charges or debits of as
6 much as \$59.95 to a bank account by ordering the free software or CD. In other instances, the
7 Terms do not even list the costs of the memberships.

8 411. Because the websites marketing Defendants' products repeatedly represent that
9 consumers have to pay only a nominal amount, and at the same time hide the terms of their true
10 offer, and because Defendants' offers involve only a small fee, many consumers provide their
11 billing information without adequate notice that they are entering into a trial period of as few as
12 three days for the advertised product, as well as trial periods of differing lengths for the Forced
13 Upsells. Consumers, seeing the express representation that all they have to pay is the small fee
14 for shipping and handling, do not expect to have to cancel one or more trial memberships that
15 they did not even know they had been signed up for.

16 412. In some instances, after having provided their billing information, consumers
17 receive a confirmation web page, and/or a confirmation email, with the log-in and password to
18 Defendants' membership sites for the advertised product and the Forced Upsells. The
19 confirmation page includes no information about memberships, their costs, or the need to cancel
20 to avoid charges. Defendants also know that many consumers never see Defendants'
21 confirmation emails because they are frequently trapped by consumers' Spam filters.

22 413. In numerous instances, the CD for the core product comes with a return address of
23 one of Defendants' many maildrops. A printed notice from Bad Customer.com accompanying
24 the CD warns that consumers who seek a chargeback "will be reported to the internet consumer
25 blacklist . . . and will result in member merchants blocking you from making purchases online!"

26 414. Consumers who call the telephone numbers listed on their billing statements next
27 to the charges and debits learn for the first time that Defendants enrolled them not only in an
28

1 expensive membership program involving the advertised “free” and “risk-free” core product, but
2 also enrolled them, through no choice of their own, into forced memberships for other products
3 marketed and sold by Defendants, the Forced Upsells. It is only then that consumers learn that
4 when they agreed to provide their billing information for a transaction with a small fee, that
5 Defendants used the billing information to assess a hefty one-time charge of as much as \$189 and
6 recurring monthly charges of as much as \$59.95 for the core product, as well as recurring charges
7 related to Defendants’ Forced Upsells. Therefore, what consumers expected to be a fee of a few
8 dollars for shipping and handling a free CD or free software has resulted in their enrollment in
9 multiple memberships, to which they never knowingly agreed, with hefty one-time and recurring
10 monthly fees.

11 415. In many instances, consumers who try to cancel Defendants’ membership
12 programs find that after they speak to Defendants about cancelling one program, they continue to
13 be charged for Defendants’ other membership programs. Only then do consumers learn that they
14 must call separate telephone numbers to cancel their memberships in Defendants’ program for the
15 core product as well as for Defendants’ Forced Upsells.

16 416. In sum, when marketing their government grant and make-money opportunities,
17 Defendants represent that consumers need to pay only a nominal amount for shipping and
18 handling, such as \$1.99 or \$2.99. Defendants, however, have failed to disclose, or to disclose
19 adequately, material terms of the offers, including: (a) that Defendants enroll consumers in
20 Negative Option Plans for not only the product or service that was the subject of the sales offer,
21 but for other products or services, as well; (b) the amount of the one-time and recurring charges
22 and the frequency and duration of the recurring charges associated with the multiple Negative
23 Option Plans; (c) that consumers must cancel the Negative Option Plans within a limited time
24 period to avoid the one-time and recurring charges; (d) the time period during which consumers
25 must cancel the Negative Option Plans in order to avoid one-time and recurring charges; and (e)
26 that each Negative Option Plan must be cancelled separately and the procedure for cancelling the
27 plans.

Defendants' Unfair Billing of Forced Upsells

417. Defendants also arrange for their marketing partners to bundle Defendants' Upsells with the sale of the marketing partners' core product. In many cases, Defendants' Upsells are automatically bundled with the partner's core product and consumers have no opportunity to opt-out of these Forced Upsells.

418. In numerous cases Defendants' marketing partners' websites contain no disclosures whatsoever about the Forced Upsells. In other instances, the marketing partners' disclosures appear in tiny boxes well below the Submit button, with no membership, cost, or cancellation information.

419. Defendants have ultimate control over the appearance and location of the information concerning the Upsells on the websites of their marketing partners. Defendants' contracts with their marketing partners clearly state that Defendants must review and provide their written approval for the placement of all of their Upsells on their marketing partners' sites. In numerous instances, Defendants have approved how their Upsells appear on the websites of their marketing partners even though Defendants' review shows that Defendants' Forced Upsells are not disclosed, or are inadequately disclosed, on their partners' websites. Further, Defendants regularly review the websites of their marketing partners who offer Defendants' Upsells; Defendants also respond to the telephone and written complaints about the Upsells bundled with their marketing partners' core products. Defendants therefore know that their marketing partners continue to fail to disclose, or disclose adequately, material information about the Forced Upsells, or even the existence of these Upsells.

420. Yet, even though Defendants know that, in numerous instances, the websites of their marketing partners do not disclose, or disclose adequately, the existence of Defendants' Forced Upsells, Defendants still process the credit and debit card charges associated with the Upsells offered on these websites.

1 421. In numerous instances, consumers do not receive a confirmation page or email
2 regarding Defendants' Upsells bundled with the core products sold by Defendants' marketing
3 partners.

4 422. In numerous instances, consumers have not authorized Defendants to charge their
5 credit cards or debit their bank accounts for the Upsells bundled with the core products sold by
6 Defendants' marketing products.

7 423. In numerous instances, Defendants' practice of charging or debiting consumers'
8 accounts for undisclosed or inadequately disclosed Forced Upsells on their marketing partners'
9 websites has caused consumers' credit and debit accounts to be charged substantial recurring fees
10 for Defendants' Forced Upsells.

11 424. In numerous instances, Defendants' practice of charging or debiting consumers'
12 accounts for undisclosed or inadequately disclosed Forced Upsells on their marketing partners'
13 websites has depleted consumers' checking accounts, causing consumers to incur costly overdraft
14 fees.

15 425. In numerous instances, Defendants' practice of charging or debiting consumers'
16 accounts for undisclosed or inadequately disclosed Forced Upsells on their marketing partners'
17 websites has caused consumers to exceed their credit cards' credit limit and incur fees.

18 426. In numerous instances, Defendants' Forced Upsells on their marketing partners'
19 websites are undisclosed or inadequately disclosed and therefore consumers do not know how
20 they can avoid the charges.

21 427. Consumers could not avoid being charged for Defendants' Forced Upsells
22 appearing on the websites of Defendants' marketing partners. The substantial injury Defendants
23 have caused by charging and debiting consumers' accounts without authorization is not
24 outweighed by countervailing benefits to consumers or competition.

25 ***Keeping the Scheme Going***

26 428. Defendants have used at least three stratagems to perpetrate their scheme:
27 (a) they flood the Internet with phony positive reviews of their products; (b) they threaten
28

1 consumers who are considering exercising their chargeback rights; and (c) they use the Shell
2 Companies to trick banks into opening new merchant accounts through which they continue to
3 process charges and debits related to Defendants' sale of I Works' core products and Upsells.

4 ***The Phony Positive Reviews on the Internet***

5 429. Defendants' marketing practices have caused hundreds, if not thousands, of
6 consumers to post negative comments about Defendants on numerous websites and blogs.
7 Defendants have combated, and continue to combat, these unfavorable comments by hiring third
8 parties to create and post on the Internet positive articles and other web pages. In doing so,
9 Defendants represent, expressly or by implication, that these articles and other web pages are
10 independent reviews reflecting the opinions of unbiased consumers who successfully used
11 Defendants' grant product to find government grants to pay personal expenses or Defendants'
12 make-money programs to earn substantial income.

13 430. In fact, the positive articles and other web pages about Defendants' grant and
14 money-making programs are not independent reviews reflecting the opinions of unbiased
15 consumers who successfully used the grant and make-money products offered by Defendants.
16 Rather, the positive articles and other web pages were created by Defendants and their agents.
17 Defendants' representation that the positive articles and other web pages are independent reviews
18 reflecting the opinions of unbiased consumers is false.

19 431. In connection with the representation that the positive articles and other web pages
20 about Defendants' grant and money-making offers are from unbiased consumers, Defendants
21 have failed to disclose the material information that Defendants and their agents created and
22 posted these reviews.

23 ***Defendants' Threats to Blacklist Consumers Who Seek Chargebacks***

24 432. In order to minimize their chargeback rates for various products, Defendants
25 discourage consumers from exercising their chargeback rights by threatening to report consumers
26 who seek chargebacks to an Internet consumer blacklist they operate called "BadCustomer.com."
27 Defendants state that consumers who seek a chargeback "will be reported to the internet
28

1 consumer blacklist . . . and will result in member merchants blocking you from making purchases
2 online!”

3 *Defendants’ Use of Subterfuge to Obtain New Merchant Accounts*

4 433. In numerous instances, when consumers find Defendants’ charges or debits on
5 their billing statements, they contact their credit card issuers or banks to contest the charges. The
6 credit card issuer or bank “charges back” the contested amount to Defendants, which is debited
7 from Defendants’ merchant account at the merchant bank. Defendants received a large number of
8 chargebacks and were thus placed in monitoring programs established by VISA and MasterCard.
9 Defendants failed to address the problems causing the high volume of chargebacks and many of
10 their merchant accounts were terminated.

11 434. When the merchant banks began to terminate merchant accounts in the name of
12 I Works or where J. Johnson was listed as a principal, Defendants established other merchant
13 accounts to continue to process the credit and debit card charges for Defendants’ sale of core
14 products and Upsells.

15 435. In order to obtain new merchant accounts, Defendants set up numerous
16 corporations in at least six states to act as fronts on new merchant account applications.
17 Defendants directed I Works employees to make up names for these companies and obtain
18 maildrop addresses, telephone numbers, and bank accounts for each company. Defendants or
19 their employees then listed I Works employees or J. Johnson’s business acquaintances on the
20 corporate paperwork as titular principals. The sole purpose of the Shell Companies, which have
21 no employees and no offices, was to lend their names to obtain new merchant accounts and open
22 bank accounts. Since 2009, Defendants have opened numerous different merchant accounts
23 under the names of Shell Companies so that they can continue processing the credit and debit
24 card charges for products I Works markets and sells for itself and its clients, and for the Upsells
25 that are bundled with the core products sold by I Works’s marketing partners. Finally,
26 Defendants completed the charade by renaming their products, so as to make it harder for the
27 Payment Processors and banks to connect the Shell Companies with I Works and J. Johnson.
28

1 436. Furthermore, when applying for new merchant accounts in the names of the Shell
2 Companies, Defendants actively misrepresented how their underlying products would be
3 marketed. As part of the application process for new merchant accounts, some Payment
4 Processors and banks request the prospective merchant to submit a copy of the website the
5 merchant intends to use to sell the product. These websites are commonly referred to as
6 “underwriting sites.” On numerous occasions, Defendants were made aware by the agents for
7 Payment Processors that some Payment Processors and banks would not approve merchant
8 account applications associated with websites that marketed products via Upsells. Additionally,
9 some Payment Processors and banks require that all material terms and conditions of any offer on
10 the website associated with the merchant account be clearly and conspicuously disclosed in large
11 type throughout the website including on the Order page adjacent to the Submit button.

12 437. To obtain new merchant accounts, Defendants created “dummy” underwriting
13 sites to include with their applications. Defendants’ dummy underwriting sites differ
14 significantly from the websites that actually generated Defendants’ sales. For example,
15 Defendants’ dummy underwriting sites usually had highly visible disclosures about the trial
16 memberships and their monthly cost that were simple, clear and concise, and in a large font; did
17 not include Upsells; did not contain extravagant earnings claims; and did not include trademarked
18 terms such as Google or eBay.

19 438. Furthermore, Defendants often used the dummy underwriting sites to deflect
20 blame when confronted by angry consumers. When a bank or other entity contacted Defendants
21 or one of Defendants’ Payment Processors requesting information on behalf of an upset consumer
22 concerning one of Defendants’ charges or debits, Defendants routinely responded to the request
23 by referring the requestor to a dummy underwriting site, containing the more visible and clear
24 disclosures and no Upsells, rather than to the websites that actually generated Defendants’ sales.

25 439. Through these Shell Companies, Defendants continue to market these products in
26 the same manner that caused them to receive astronomical amounts of chargebacks in the first
27
28

instance, by using false claims, Forced Upsells, phony testimonials, fake positive reviews, and hiding material terms of their Negative Option Plans.

Consumer Complaints

440. Defendants receive and respond to thousands of consumer complaints from State Attorneys Generals and consumer organizations such as the Better Business Bureau. Defendants use two calls centers, one in Ephraim, Utah, and the other in the Philippines, to handle thousands of consumer complaints each day about Defendants' sale of core products and Upsells. Defendants created internal reports detailing numerous calls into the call centers from consumers complaining about Defendants' marketing methods and unauthorized charges.

VIOLATIONS OF THE FTC ACT

441. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

442. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

443. Acts or practices are unfair under Section 5(a) of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

444. As set forth below, Defendants have engaged in deceptive and unfair practices in connection with the sale of products or services via Negative Option Plans.

COUNT I

Misrepresenting the Availability of Government Grants to Pay Personal Expenses

445. In numerous instances, in connection with the marketing and sale of grant-related products or services, Defendants represent, directly or indirectly, expressly or by implication, that government grants are generally available to individuals to pay personal expenses.

446. The representation set forth in Paragraph 445 of this Complaint is false, misleading, and/or was not substantiated at the time the representation was made because there are few, if any, government grants available to individuals to pay personal expenses.

447. Therefore, the making of the representation set forth in Paragraph 445 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Misrepresenting That Consumers Using Defendants' Grant Product Are Likely to Find Government Grants to Pay Personal Expenses

448. In numerous instances, in connection with the marketing and sale of grant-related products or services, Defendants represent, directly or indirectly, expressly or by implication, that consumers using Defendants' grant product are likely to find and obtain government grants to pay personal expenses.

449. The representation set forth in Paragraph 448 of this Complaint is false, misleading, and/or was not substantiated at the time the representation was made because consumers using Defendants' grant product are unlikely to find and obtain government grants to pay personal expenses.

450. Therefore, the making of the representation set forth in Paragraph 448 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Misrepresenting the Amount of Income That Consumers Are Likely to Earn Using Defendants' Products

451. In numerous instances in connection with the marketing and sale of make-money products or services, Defendants represent, directly or indirectly, expressly or by implication, to consumers that consumers are likely to earn substantial income such as \$200 - \$943 or more per day by using products marketed and sold by Defendants.

452. The representation set forth in Paragraph 451 of this Complaint is false, misleading, and/or was not substantiated at the time the representation was made because consumers using Defendants' make-money products are not likely to earn substantial income such as \$200 - \$943 or more per day.

453. Therefore, the making of the representation set forth in Paragraph 451 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Misrepresenting the Free or Risk-free Nature of Defendants' Offers

454. In numerous instances, in connection with the marketing and sale of various products or services, including grant and make-money products, Defendants represent, directly or indirectly, expressly or by implication, that Defendants' offers are free or risk-free.

455. In truth and in fact, Defendants' offers are not free or risk-free. Consumers who provide their billing information to pay a nominal fee are likely to be enrolled in Negative Option Plans for a core product and billed high one-time and recurring amounts if they do not cancel during undisclosed or poorly disclosed trial memberships of limited duration. Defendants also immediately enroll consumers into Forced Upsells with high monthly fees.

456. Therefore, Defendants' representations as set forth in Paragraph 454 of this Complaint constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

Failing to Disclose that Consumers Will be Entered Into Negative Option Continuity Plans

457. In numerous instances, in connection with the marketing and sale of various products or services, including products that purport to enable consumers to obtain government grants for personal expenses and products that purport to enable consumers to earn money, Defendants represent that consumers need pay only a nominal amount, such as \$1.99 or \$2.99, for a shipping and handling fee.

458. In numerous instances in which Defendants have made the representation set forth in Paragraph 457 of this Complaint, Defendants have failed to disclose, or disclose adequately, to consumers, material terms and conditions of their offer, including:

A. that Defendants enroll consumers in Negative Option Plans for not only the product or service that was the subject of the advertised offer, but for other products or services as well;

B. the amount of the one-time and recurring charges and the frequency and duration of the recurring charges associated with the Negative Option Plans;

C. that consumers must cancel the Negative Option Plans within a limited time period to avoid the one-time and recurring charges;

D. the time period during which consumers must cancel the Negative Option Plans in order to avoid one-time and recurring charges;

E. that each Negative Option Plan must be cancelled separately and the procedure for cancelling the Plans.

459. Defendants' failure to disclose, or disclose adequately, the material information described in Paragraph 458, above, in light of the representation described in Paragraph 457, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VI

**Misrepresenting That Consumers Using Defendants' Grant Product
Are Likely to Obtain Grants Such as Those Obtained
By Consumers in the Testimonials**

460. In connection with the marketing and sale of grant-related products or services, Defendants represent, directly or indirectly, expressly or by implication, that consumers who use Defendants' grant product are likely to obtain grants such as those obtained by consumers in the testimonials appearing on websites advertising Defendants' grant product.

461. The representation set forth in Paragraph 460 of this Complaint is false or was not substantiated at the time the representation was made because consumers who use Defendants' grant product are not likely to obtain grants such as those obtained by consumers in the testimonials appearing on websites advertising Defendants' grant product.

462. Therefore, the making of the representations set forth in Paragraph 460, above, constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VII

Misrepresenting That Positive Articles Are From Unbiased Consumers Who Used the Products Offered by Defendants

463. In numerous instances in connection with the marketing and sale of various products or services, including products to obtain government grants to pay personal expenses and make-money opportunities, Defendants represent that the positive articles and other web pages about Defendants' grant and make-money opportunities are independent reviews that reflect the opinions of unbiased consumers who have successfully used Defendants' products or services.

464. In truth and in fact, the positive articles and other web pages are not independent reviews reflecting the opinions of unbiased consumers. The positive articles and other web pages were created by Defendants and their agents.

465. Therefore, the making of the representation set forth in Paragraph 463 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VIII

Failing to Disclose That Defendants Created the Positive Articles and Other Web Pages About The Products They Market

466. In numerous instances in connection with the marketing and sale of various products or services, including products to obtain government grants to pay personal expenses and make-money opportunities, Defendants or their agents create and post hundreds of positive articles and other web pages about Defendants' products or services.

467. In numerous instances in connection with the positive articles and other web pages described in Paragraph 466, Defendants represent, directly or indirectly, expressly or by

1 implication, that these postings reflect endorsements from individuals who have successfully used
2 Defendants' products or services.

3 468. In numerous instances in connection with the representation set forth in Paragraph
4 467, Defendants have failed to disclose, or disclose adequately, that they or their agents created
5 and posted the positive articles and other web pages.

6 469. Defendants' failure to disclose, or to disclose adequately, the material information
7 set forth in Paragraph 468, above, in light of the representation described in Paragraph 467,
8 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a).

10 **COUNT IX**

11 **Defendants' Unfair Billing Practices**

12 470. In numerous instances, Defendants have charged consumers' credit cards or
13 debited consumers' bank accounts without authorization for Forced Upsells that Defendants
14 bundle with the core products sold by them or their marketing partners by using consumers'
15 billing information that Defendants or their marketing partners received when selling core
16 products.

17 471. Defendants' practice of charging consumers' credit cards or debiting consumers'
18 bank accounts without authorization has caused or is likely to cause substantial injury to
19 consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing
20 benefits to consumers or competition.

21 472. Therefore, Defendants' practice as alleged in Paragraphs 470 of this Complaint
22 constitutes an unfair act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **THE ELECTRONIC FUND TRANSFER ACT** 24 **AND REGULATION E**

25 473. Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized
26 electronic fund transfer from a consumer's account may be authorized by the consumer only in
27 writing, and a copy of such authorization shall be provided to the consumer when made." Section
28

903(9) of EFTA, 15 U.S.C. § 1693a(9), provides that the term “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in advance to recur at substantially regular intervals.”

474. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.”

475. Section 205.10 of the Federal Reserve Board’s Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he authorization process should evidence the consumer’s identity and assent to the authorization.” *Id.* ¶ 10(b), cmt 5. The Official Staff Commentary further provides that “[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.” *Id.* ¶ 10(b), cmt 6.

VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E

COUNT X

476. In numerous instances, Defendants have debited consumers’ bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

477. In numerous instances, Defendants have debited consumers’ bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by the consumer for preauthorized electronic fund transfers from the consumer’s account, thereby violating Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

478. Pursuant to Section 917 of EFTA, 15 U.S.C. § 1693o(c), every violation of EFTA and Regulation E constitutes a violation of the FTC Act.

479. By engaging in violations of EFTA and Regulation E as alleged in Paragraphs 476 and 477 of this Complaint, Defendants have engaged in violations of the FTC Act. 15 U.S.C. § 1693o(c).

COUNT XI

Disgorgement of the Assets Held by Relief Defendants in Constructive Trust for the Benefit of Consumers

480. The Commission incorporates and restates Paragraphs 1 through 479 of this Amended Complaint, as though fully set forth in this Paragraph 480.

481. Defendants have committed deceptive and unfair acts and practices in violation of Section 5(a) of the FTC Act, Section 907(a) of EFTA, and Section 205.10(b) of Regulation E in connection with the marketing and sale of Internet-based information products and services.

482. Relief defendants Sharla Johnson, Kerry Johnson, Barbara Johnson, the KB Family Limited Partnership, KV Electric, Orange Cat Investments, Zibby, and Zibby Flight Service (collectively “Relief Defendants”) have received, directly or indirectly, funds, other assets, or both, or otherwise benefitted from funds that are traceable to funds obtained from Defendants’ customers through the unlawful acts or practices described herein.

483. Relief Defendants are not bona fide purchasers and do not have legal and equitable title to Defendants' customers' funds and other assets, and Relief Defendants will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of Defendants' unlawful acts or practices.

484. By reason of the foregoing, Relief Defendants hold funds and assets in constructive trust for the benefit of Defendants' customers.

CONSUMER INJURY

485. Defendants' misrepresentations, deceptive omissions, and unfair billing practices have generated more than \$350 million in sales. After refunds and chargebacks, the unreimbursed consumer injury is more than \$275 million. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 10(b), as set forth above. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

486. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act, EFTA, and Regulation E. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), EFTA, Regulation E, and the Court's own equitable powers, requests that the Court:

1 1. Award the FTC such injunctive and ancillary relief as may be necessary to avert
2 the likelihood of consumer injury during the pendency of this action and to preserve the
3 possibility of effective final relief, including, but not limited to, temporary and preliminary
4 injunctions, asset freeze, and appointment of a receiver;
5

6 2. Enter a permanent injunction to prevent future violations of the FTC Act, EFTA,
7 and Regulation E by Defendants;
8

9 3. Award such relief as the Court finds necessary to redress injury to consumers
10 resulting from the Defendants' violations of the FTC Act, EFTA, and Regulation E, including,
11 but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid,
12 and the disgorgement of ill-gotten monies;
13

14 4. Enter an order requiring Relief Defendants to disgorge all funds and assets, or the
15 value of the benefit they have received from the funds and assets, which are traceable to
16 Defendants' unlawful acts or practices,
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION

Plaintiff,

vs.

JEREMY JOHNSON, individually, as officer of
Defendants I Works, Inc.; Cloud Nine, Inc.; CPA
Upsell, Inc.; Elite Debit, Inc.; Internet Economy,
Inc.; Market Funding, Inc.; and Success Marketing,
Inc.; as a member of Defendant Network Agenda,
LLC; and as the *de facto* principal of numerous
Defendant Shell Companies;

IWORKS, INC., a Utah Corporation, et al.,

Defendants.

Case No. 2:10-cv-02203-RLH-GWF

NOTICE OF ERRATA

Defendants, excepting Scott Leavitt and Employee Plus, Inc., by and through their
undersigned counsel of record, hereby submit this Notice of Errata, relating to their *Opposition to
Motion for Preliminary Injunction* (“Opposition”) filed on February 7, 2011.

1 Due to a clerical error, in some places the Opposition cites to exhibits by the wrong exhibit
2 number. For example, the "Ex. 54" referenced in the brief on page 16 is actually Exhibit 11. In
3 addition, one of the exhibits cited in the Opposition (Ex. 87) was not submitted, and the reference
4 thereto should be deleted from the Opposition.

5 A corrected Opposition is submitted herewith as Exhibit A (the "Substitute Opposition").
6 Defendants request that the Substitute Opposition be substituted for the Opposition currently on file.
7 The only changes in the Substitute Opposition are corrected exhibit numbers, and the deletion of the
8 citation to Ex. 87 (along with any resultant changes to lines and/or pages).

9 Undersigned counsel apologizes for any inconvenience.

10 Dated this 8th day of February, 2011.

11
12 /s/ Brett D. Ekins

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v.

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EXHIBIT A

TO NOTICE OF ERRATA

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION

Plaintiff,

vs.

JEREMY JOHNSON, individually, as officer of
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Upsell, Inc.; Elite Debit, Inc.; Internet Economy,
Inc.; Market Funding, Inc.; and Success Marketing,
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LLC; and as the *de facto* principal of numerous
Defendant Shell Companies;

IWORKS, INC., a Utah Corporation, et al.,

Defendants.

Case No. 2:10-cv-02203-RLH-GWF

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Somewhat ironically, the Federal Trade Commission’s (“Commission” or “FTC”) Motion for Preliminary Injunction (“Motion”) is filled with half-truths, distortions, and inflammatory rhetoric that is not supported by the evidence. The Commission tells a story of a “well-oiled fraud machine” run by the “mastermind” Jeremy Johnson and his “lieutenants”, who spent the past 5 years “bilking”, “luring” and otherwise “tricking” consumers. The evidence, however, tells a much different story.

A. iWorks’ Business.

iWorks marketed programs on the Internet using the affiliate-marketing model and by offering products as upsells on other merchants’ webpages. iWorks either developed or obtained the right to market products or programs on the Internet, including grant-funding programs, income-generation programs, and health and fitness products. iWorks contracted with brokers, who designed and hosted product landing pages, ordering pages and thank-you pages. The broker, in turn, contracted with affiliates who drove traffic to the broker’s landing page through the use of Internet advertising such as banner ads, blog postings, and e-mail solicitations of their own creation and design. Declaration of Bryce Payne (“Payne”), ¶ 1A.

B. Product Claims for Products Marketed by iWorks Were Truthful.

iWorks’s grant-funding programs (the “Grant Program”) distilled hundreds of thousands of pages of information from numerous sources into a user-friendly database and website that enabled consumers to quickly identify key information about available grants and taught consumers how to apply for them.

The Commission contends that advertising for the Grant Program falsely represented that government grants were available to individuals to pay for personal expenses. To the contrary, many landing pages made no mention whatsoever of using grants to pay for personal expenses, and those that did expressly referenced both public and private grants. In fact, there are thousands of private grants throughout the United States that make funds available for personal and household use, and the Grant Program explained how to find and apply for those grants. Moreover, there are government grants available to qualifying individuals to pay for certain specified personal expenses.

1 In any event, there is no reason to believe that whether the source of funds was private or public was
2 material to consumers ordering the Grant Program.

3 The Commission has also objected to the testimonials on the Grant Program landing pages.
4 However, the documents produced by iWorks demonstrate that these testimonials are truthful,
5 accurate and fully substantiated. In particular, while the Commission has expressed concern that the
6 testimonials all relate to grants received through the Grant-A-Day program, the Commission has
7 failed to demonstrate why that renders these testimonials misleading particularly given the fact that
8 the vast majority of testimonials expressly disclose that the grants at issue were obtained through the
9 Grant-A-Day program. Further, all of the testimonials were accompanied by disclaimers stating that
10 results might vary—a disclosure that the FTC recognized at that time as providing a safe harbor
11 under its Testimonial and Endorsement Guidelines.

12 As to the income generation programs (“the Income Generation Program”), the Commission
13 alleges that landing pages overstated the amount one could earn by using the techniques taught
14 through that program. However, most of the landing pages that were actually presented to consumers
15 made no specific earnings claims at all. Further, any specific dollar amounts mentioned on those
16 pages were based on earnings that the developer of the program himself had made by using the
17 technique that the program teaches and were no higher than earnings claims mentioned on the Google
18 AdWords and AdSense sites themselves. Nonetheless, insofar as any landing or order pages
19 suggested that specific amounts would be earned by using the program, iWorks would demand that
20 the affiliate marketers remove such language.

21 **C. The “Offer Term” Disclosures Met or Exceeded Industry Standards.**

22 The order pages that were actually used for sales fully satisfied FTC guidelines for the
23 disclosure of negative option terms. On every order page there was a distinct paragraph adjacent to
24 the “Submit” button that included all of the material terms and conditions of the offer in easily
25 understandable language, including:

- 26 • That by enrolling in the program the consumer would receive a free CD (subject to
27 shipping and handling charges);

- That the consumer would receive a free trial membership that provided access to a member website, live chat assistance, and other benefits, and the length of the free trial period;
- That the consumer had an affirmative obligation to cancel, and that members who did not cancel during the free trial period would be charged a specified monthly fee through the credit or debit card that the consumer had entered on the order page; and
- The amount of the fee, clearly disclosed in an easy to read numeric format.

If enrollment involved any upsells, these offer terms also included a clear disclosure of all of the material terms and conditions of the upsell, including:

- That by enrolling in the core program the consumer was also agreeing to enroll in one or two additional programs on a free trial basis;
- The length of the free trial;
- The affirmative obligation to cancel at the end of the free trial;
- The amount the consumer would be billed if she did not cancel at the end of the free trial.

All of this information could also be viewed by clicking the Terms and Conditions hyperlink on the order page or the landing page. The order page explained that, by enrolling in the program, the consumer was agreeing to those Terms and Conditions. In fact, many order pages also required the consumer to affirmatively check a box to confirm assent to the Terms and Conditions.

Immediately after clicking the Submit button, the consumer was presented with a purchase confirmation page that reiterated all of the important membership and payment terms for the core product as well as any upsell products. In fact, iWorks produced a video for the page that would help the consumer understand what she was getting and that she was in a trial program. The consumer was also immediately sent an email reaffirming the same information. Thus, every consumer received at least three “unavoidable” disclosures of the material terms and conditions of both the core and upsell products before any monthly charges were incurred.

These practices were expressly modeled on the FTC’s own guidelines—placement, proximity, prominence and presentation—for online disclosures.

1 Cancellation statistics confirm that consumers read and understood these disclosures.
2 Consistently, one-third of new members cancelled their memberships during the free trial periods
3 (Payne, ¶ 39), thus evidencing that consumers were well aware of the fact that they had enrolled in a
4 continuity program and had to cancel in order to end it. Significantly, cancellations of upsell
5 programs during the free trial period exceeded those for core programs (Payne, ¶ 39), thus belying
6 any notion that consumers were unaware of having enrolled in the upsell programs even if they were
7 aware of having enrolled in the core programs.

8 **D. iWorks Implemented and Maintained Comprehensive Compliance Measures.**

9 iWorks zealously enforced compliance with state and federal marketing and disclosure
10 requirements, to the point that some affiliates stopped doing business with iWorks because iWorks
11 was “too compliant.” Payne, ¶ 40.

12 Starting in 2006, iWorks obtained an opinion from its then-counsel confirming that its
13 disclosure practices satisfied current disclosure requirements. In an effort to stay abreast of
14 disclosure regulations, Jeremy Johnson and then-General Manager Ryan Riddle flew to Washington
15 D.C. to attend an FTC negative option conference in January of 2007, where the FTC explained that
16 disclosures should be “clear and conspicuous” and “within the vicinity of the order submit button”—
17 practices that iWorks was already following. (Mr. Johnson also discussed disclosures in one-on-one
18 meetings with Commission officials.) Upon return, Mr. Johnson ordered a thorough review of all
19 marketing and sales materials to ensure they were in full compliance with the information provided at
20 the FTC conference. iWorks thereafter assiduously monitored developments in the regulatory
21 environment, proactively endeavored to understand the FTC’s standards for adequate disclosure, and
22 insisted that brokers, affiliates and advertisers adapt to meet those standards as well. Declaration of
23 Jeremy Johnson (“Johnson”), ¶ 2.

24 In 2008, at considerable expense, iWorks designed and implemented a Pixel reporting tool to
25 track the landing and order pages through which sales were being generated. Through this tool,
26 iWorks could promptly identify pages that were generating sales but were not in accord with
27 iWorks’s rigorous compliance standards. Whenever that occurred, iWorks would promptly contact
28 its broker or third-party advertiser and demand changes to those pages. In fact, iWorks eventually

terminated a key broker, Cathexis, who was not sufficiently diligent in correcting landing and order pages that iWorks found unacceptable. By terminating this relationship, iWorks lost an entire affiliate network that accounted for almost 9,000 sales per month. iWorks also unilaterally canceled more than 79,000 memberships so customers would not be billed when it discovered that the page generated for that sale may have had compliance issues. iWorks made these cancellations after it had already paid the cost-per-acquisition fee to the broker.

These policies and practices were unique in the affiliate-marketing industry. In fact, in 2009 the Utah Attorney General and investigators from Utah's Consumer Protection Division reviewed iWorks's operations and business practices, at iWorks' invitation, and concluded that iWorks should be held out as a model for online marketing, customer service, and product fulfillment practices. Payne, ¶ 41.

E. Any Deviations Were Caused by Rogue Affiliates, for Whose Conduct iWorks is Not Responsible.

To the extent any of the landing or order pages for any of the programs at issue lacked adequate disclosures and/or contained representations that the Commission believes to be deceptive, those alleged deficiencies were the result of brokers, affiliates or third-party advertisers refusing to follow iWorks's own guidelines. Despite iWorks's zealous compliance efforts, iWorks ultimately did not have the ability to control what pages were presented to consumers through the brokers' servers. iWorks could only demand that the pages be corrected, and, if necessary, that the broker terminate the affiliate responsible. As a matter of law, iWorks is not liable for unilateral conduct by affiliates who published websites that allegedly violated the FTC Act.

F. iWorks's Efforts to Protect Against Fraudulent or Unnecessary Chargebacks Did Not Deceive or Injure Consumers.

The Commission somehow construes as deceptive the measures taken by iWorks to protect itself from affiliate and friendly fraud, which were subjecting iWorks—and many other merchants—to artificially high chargeback rates. As reported in numerous business publications, affiliates who were paid on a cost-per-acquisition model would engineer sham enrollments that would promptly be canceled, often through chargebacks, but still generate an acquisition fee for the affiliate. To help

1 combat these unfair practices, an ISO recommended to iWorks that multiple merchant accounts be
 2 opened as a means to track and segregate this affiliate fraud.

3 In addition, card companies had liberalized chargeback procedures, thus providing an
 4 inducement for consumers to purchase and use products and then demand a chargeback, without ever
 5 contacting the merchant's customer service department to express any concern about the product or
 6 the manner in which it had been sold. Jeremy Johnson therefore created BadCustomer to monitor
 7 consumer chargeback activity and to encourage consumers to attempt a customer service solution
 8 before initiating chargebacks.

9 These anti-fraud measures, which in any event were not even implemented until shortly
 10 before iWorks decided to wind down its business, did no harm whatsoever to consumers.

11 **G. The Gravity of iWorks' Alleged Deception is Belied by the Commission's Delay**
 12 **in Moving against iWorks.**

13 The Commission began scrutinizing iWorks and their marketing practices at least as early as
 14 October 2008. Payne, ¶ 48. Many of the landing and order pages the Commission cites as deceptive
 15 were accordingly known to the Commission as of October 2008. Yet the Commission did not open
 16 a formal investigation against iWorks until more than a year later in February 2010, and did not file
 17 this action until more than two years later in December 2010.

18 If iWorks' marketing practices were as deceptive as the Commission claims they were, there
 19 is no way the Commission would have delayed action against iWorks for as long as it did. Indeed, if
 20 iWorks was truly a "well-oiled fraud machine" deceiving consumers on the massive scale alleged by
 21 the Commission, it is inconceivable that the Commission would have sat back and watched for a year
 22 or two. The Commission's actions—or lack thereof—tell the Court a lot more about the legality of
 23 iWorks' marketing practices than the Commission's inflammatory, exaggerated rhetoric.

24 **II. IWORKE'S GRANT PROGRAM DID NOT VIOLATE THE FTC ACT.**

25 iWorks' Grant Program distilled hundreds of thousands of pages of information from
 26 numerous sources into a user-friendly database and website that enabled consumers to quickly
 27 identify key information about available grants and taught consumers how to apply for them. Payne,
 28 ¶ 2.

1 The Commission contends that iWorks' advertising for the Grant Program falsely represented
2 that government grants were available to pay for personal expenses. Mot. at 5:9-13:11; 53:14-55:12.
3 This contention is without merit.

4 **First**, the vast majority of landing and order pages used with the Grant Program do not
5 represent that government grants are available to pay for personal expenses. The Commission cites
6 several landing and order pages that arguably do represent that government grants are available to
7 pay for certain kinds of personal expenses, but those pages were used for only short periods of time
8 and then discontinued. The vast majority of landing and order pages used with the Grant Program
9 make clear that the source of a grant may be government ***or*** private. Private grants are indisputably
10 available to pay personal expenses.

11 **Second**, government grants actually can be obtained by individuals to pay personal expenses.
12 The Commission's evidence to the contrary consists of the declarations of experts who for some
13 reason ignore the vast amounts of government money given to individuals for use with payment of
14 qualifying personal expenses. Whether all of that money is technically a "grant" or "assistance", it is
15 understood by the public as a "grant".

16 **Third**, the Commission does not make the necessary showing of materiality, i.e., that
17 consumers actually cared whether the money they hoped to receive came from a government or
18 private source, or was technically a "grant" or "assistance". The Commission cannot make that
19 showing, as users of the Grant Program only cared about receiving the money and did not care about
20 the details as to source or label. Furthermore, the Commission's own expert, David Bauer, admits
21 that consumers believed that government grants were available for personal expenses before they
22 even encountered the marketing materials for the Grant Program. The materiality of iWorks' alleged
23 misrepresentations regarding government grants decreases sharply in view of Mr. Bauer's testimony.

24 **A. Factual Background of Grant Program.**

25 iWorks developed and marketed the Grant Program to help customers obtain grant funding.
26 The program was designed to address a common complaint—the inability to identify grants for
27 which the consumer may be eligible among the thousands of public and private resources available.
28 Payne, ¶ 3.

iWorks distilled hundreds of thousands of pages of information from numerous sources and designed a user-friendly database. The Program provided members with a CD and membership in an online searchable database that contained real-time, up-to-date information. The Grant Program materials also provided step-by-step instructions for completing grant applications, tips for successful applications, online assistance in the form of a chat feature, and grant application templates. iWorks grant products included Grant A Day, Grant Search Assistant, Grant Wizard Pro, Grant Writer Pro, Grant Funding Solution, Grant Master, and Grant Creator. Re-brands include MyGrantSite, Grant Stimulus Source, Govt Grant Solutions, Grant Doctor (GD) and Federal Grant Connection.¹ Payne, ¶ 4.

iWorks invested significant resources in the Grant Program, with the result that it had advantages over other grant-search products on the market (which unlike iWorks's Grant Program did not have extensive private grant information). iWorks retained the services of grant expert Dr. John Porter, a certified grant writer and Executive Director for the American Grant Writers' Association.² Pursuant to his contract with iWorks, Dr. Porter was responsible for ensuring that iWorks provided the most up-to-date information regarding grants available in the United States and, more generally, accurate information regarding the grant writing and application process. Dr. Porter was also responsible for writing grant-related articles for the website, training chat representatives in assisting grant searchers, identifying the most up-to-date grant opportunities, and keeping the websites current. In return for his services managing and adding his expertise to the grant websites, iWorks paid Dr. Porter a monthly fee from April 2007 through August 2010. In total, iWorks has spent approximately \$153,750 on Dr. Porter's services. Payne, ¶ 5.

B. Most Pages Used with the Grant Program do not Represent that *Government Grants are Available to Pay for Personal Expenses.*

iWorks did not represent that government grants are available to pay for personal expenses. The vast majority of landing and order pages used in the Grant Program that made any reference to

¹ The reason for the different names is not to confuse consumers, but rather to make the product more attractive to affiliate marketers. Payne, ¶ 4.

² This is the same Dr. Porter who has submitted a declaration in support of the Commission's Motion.

1 personal expenses represented that the grants might originate from a private *or* government source.
 2 Since private grants clearly can be used to pay for personal expenses, as explained below,
 3 Defendants' landing and order pages making reference to grants for personal expenses are not
 4 deceptive.

5 The landing and order pages that referred to grants for personal expenses made clear,
 6 typically several times, that the Grant Program contained information on both government *and*
 7 private grants:

- 8 • Grant Advisor landing page (advertising search software for "*Private* and Federal
 9 Grants") (emphasis added) (Ex. 1)³;
- 10 • Grant Advisor order page ("There Are Over 90,000 *Private* & Federal Grants Listed")
 11 (emphasis added) (Ex. 2);
- 12 • Grant Professor landing page ("There are over 1,000 Federal *and 50,000 Private*
 13 *Grants*") (emphasis added) (Ex. 3);
- 14 • Grant Search Assistant landing page ("you might qualify for federal or *private* grant
 15 money") (emphasis added) (Ex. 4);
- 16 • Grant Generator landing page (prominent text stating for "Government and *Private*
 17 Grants . . . help is finally here") (emphasis added) (Ex. 5);
- 18 • Fast Grants landing page (advertising program to search for a "Government or *Private*
 19 Grant") (emphasis added) (Ex. 6);
- 20 • Government Money Secrets landing page (advertising program to search for a
 21 "Government or *Private* Grant") (emphasis added) (Ex. 7);

22 In the majority of site pages, the phrase "government" is rarely (sometimes never) used other than in
 23 conjunction with "private" grants. The name of one of the CDs that consumers ordered was: "Your
 24 Federal and Private Grant CD." Payne, ¶ 6.

25 An examination of the most popular landing and order pages for the Grant Program provides
 26 further illustration. Payne, ¶ 7. One landing page states, "There are thousands of federal and private
 27 grants out there, and we can help you find them!" (Ex. 8). Another popular website, Grant Search
 28

³ All referenced exhibits are attached to the declaration of Bryce Payne submitted herewith, unless otherwise noted.

1 Assistant, states that “you might qualify for federal or private grant money.” (Ex. 4). Grant Advisor
2 is another popular site, and, as noted above, explained that there were thousands of private grants
3 available. Furthermore, landing pages for these and some of the other most popular Grant Program
4 websites do not contain any testimonials that state or imply that consumers received government
5 grants. Indeed, Grant Master, which was the largest Grant Program (Payne, ¶ 4), had no testimonials
6 at all. (Ex. 8).

7 Thus, for the most part, the Grant Program landing and order pages that make reference to
8 personal expenses contain language making clear that the grants might originate from a private or
9 government source. There is no representation that the grant, if obtained, will be from a government
10 source.

11 The Commission cites in support of its Motion several pages in which a representation was
12 allegedly made that government grants might be used for personal expenses. Putting aside for now
13 the truthfulness of such representations (discussed below), the landing pages on which the
14 Commission relies are isolated examples that were associated with relatively few sales.

15 For example, iWorks’ records show that the Commission’s Exhibit 119 was used for a short
16 period in 2009 in connection with a maximum of 1,861 sales—or less than one percent of total sales
17 made in connection with the Grant Program.⁴ Payne, ¶ 8. The Commission’s Exhibit 120 was used
18 for a short period in 2009 in connection with at most 1,950 sales—again, less than one percent of
19 total sales made in connection with the Grant Program. Payne, ¶ 9. Exhibit 121 was used for a brief
20 period in 2006-2007, and then discontinued after iWorks attended an FTC conference in January
21 2007. Payne, ¶ 10. Exhibit 122 was discontinued in 2007. Payne, ¶ 11. Exhibits 124 and 125 were
22 created and posted by iWorks’ brokers without iWorks’ approval, and iWorks promptly instructed
23 the brokers to take them down as soon as they came to their attention. Payne, ¶ 12. Exhibit 130 was
24 just a test/development page and was never actually used in a “live” setting to effectuate any sales.
25 Payne, ¶ 13.

26 Thus, the evidence proffered by the Commission of iWorks’ deceptive landing and order
27 pages is not typical of the marketing materials used with most of iWorks’ Grant Program sales. The
28

⁴ More than 2,000,000 sales were made in connection with the Grant Program.

Commission has essentially cherry-picked what it perceives to be the most deceptive landing and order pages and presented those to the Court as representative of the whole. They are not, and the relief the Commission seeks on the basis of the supposedly deceptive examples is wildly disproportionate.

C. Grants are Available to Individuals for Personal Expenses.

Grants, both government and private, are available to individuals for the payment of personal expenses relating to education, housing, health care, and other needs.

Before substantiating this claim, it should first be emphasized that the average consumer understands the term “grant” broadly to include any form of money received from an organization for a particular purpose. The following dictionary definitions of “grant” are instructive in this regard⁵:

- “A giving of funds for a specific purpose: *federal grants for medical research.*” (*The American Heritage Dictionary of the English Language*, 4th Ed.)
- “something granted, as property, a tract of land, an exclusive right or power, money from a fund, etc.” (Webster’s New World College Dictionary)
- “something granted; *especially* : a gift (as of land or money) for a particular purpose” (Merriam-Webster)
- “a sum of money provided by a government, local authority, or public fund to finance educational study, overseas aid, building repairs, etc” (World English Dictionary)
- “any monetary aid” (WordNet)
- “money given for a specific purpose” (Newbury House Dictionary of American English)

Declaration of Brett D. Ekins (“Ekins”), ¶ 2, Ex. 9. Thus, consumers do not make a fine, technical distinction between a “grant” and other forms of financial assistance. The government itself adopts a broad understanding of what constitutes a “grant” at the BenefitsGov.gov website: “Government grants are awards of financial assistance to an individual and/or organization.” It is common

⁵ The use of dictionary definitions to ascertain consumer understanding of a term is a commonly accepted practice in various contexts. *Marilyn Miglin Model Makeup, Inc. v. Jovan, Inc.*, No. 81 C 3233, 1983 WL 52354, at *3 (Sept. 28, 1983) (using dictionary to determine consumer understanding of term in false advertising case); *Surgicenters of Am., Inc. v. Med. Dental Surgeries, Co.*, 601 F.2d 1011, 1015 n. 11 (9th Cir. 1979) (using dictionary to determine consumer understanding of term in trademark case).

therefore to refer to any form of money distributed to an individual by an organization for a particular purpose as a “grant”.

1. Private Grants are Available to Individuals for Personal Expenses.

The Grant Program identifies more than 88,000 private grants. Payne, ¶ 14. A significant number of those grants provide financial and other assistance to individuals, along a wide diversity of criteria, for medical, housing, education, and other personal expenses. Below, for example, are grant programs specifically dedicated to the economically disadvantaged in New York and California alone, listed on the Grant Members Site:

- **American Academy Foundation** (giving to injured individuals who have exhausted their workers compensation benefits).
- **Avery-Fuller-Welch Childrens Foundation** (providing financial assistance to handicapped and disabled children for the purpose of increasing their self-sufficiency, funds to be used for remedial education, special schooling, psychotherapy, physical and occupational therapy and appliances).
- **Carnegie Fund for Authors** (emergency assistance to needy writers who have commercially published at least one book of reasonable length which received reader acceptance).
- **Childrens Aid Association of Amsterdam** (giving for needy residents of Montgomery County, NY including scholarships and camperships).
- **El Monte-South El Monte Emergency Resource Association** (providing emergency aid to residents in the community who need assistance for basic necessities and living expenses).
- **Emma Reed Webster Aid Association** (giving limited to needy individuals and families in Orleans County, NY).
- **Footprints in the Sand Foundation** (giving to needy families in Bergen County, NJ and Rockland County, NY).
- **Herbert and Irene Wheeler Foundation** (fellowships and emergency grants to visual artists of color who are at least 21 years of age and who are living in the Greater New York City tri-state area).
- **Housing Industry Foundation** (provides emergency housing grants for low-income households at risk of losing their housing due to an unavoidable crisis, security deposit loans under certain circumstances, and refurbishments for local shelter and housing programs).
- **John Percival and Mary C. Jefferson Endowment Fund** (grants are made to persons of limited means for medical, dental and living expenses, for educational purposes).
- **Josiah H. Danforth Memorial Fund** (grants only to residents of Fulton County, NY, for medical assistance, maximum grant per year, per individual is \$500).

- 1 • **Mary W. MacKinnon Fund** (providing medical, hospital, rehabilitation and care for
2 aged (65 or older) local indigent individuals who reside in the town of Sidney, NY and
3 who can establish financial need).
- 4 • **Maurice Villency Foundation, Inc.** (foundation awards grants to needy individuals).
- 5 • **Monahan-Laughton Memorial Fund** (providing financial assistance to those in need in
6 either the Town or Village of Pawling, NY).
- 7 • **New Horizons Foundation** (grants restricted to elderly members of Christian Scientists
8 in need who have exhausted all conventional means of support, applicant must be at least
9 65 years old, in need and a resident of southern CA).
- 10 • **North Fork Women Fund** (providing grants and support for health care costs for lesbian
11 women in North Fork, Long Island, NY).
- 12 • **Physicians Aid Associations** (providing financial and medical assistance to current,
13 disabled or retired physicians or related occupations and their immediate families).
- 14 • **Rest Haven Preventorium for Children, Inc.** (direct monetary assistance to needy
15 children in San Diego, CA, area only for medical, dental, therapy, hearing, child care, and
16 nutrition expenses).
- 17 • **Serpent Source Foundation for Women** (grants to low-income disabled female artists
18 who are residents of the San Francisco Bay area).
- 19 • **Swift Memorial Health Care Foundation** (giving primarily for health care, support also
20 for college scholarships).
- 21 • **The Annie Tinker Association for Women, Inc.** (support for retired professional
22 women who are physically, mentally or emotionally capable of living independently).
- 23 • **The Bagby Foundation for the Musical Arts** (giving for aged, needy individuals who
24 have aided the world of operatic or classical music).
- 25 • **The DuBose and Dorothy Heyward Memorial Fund** (giving primarily for the arts,
26 cancer research and treatment).
- 27 • **The Father Peter G. Young, Jr. Foundation** (grants to needy individuals with an
28 emergency need to improve the quality of life of low income individuals).
- **The Foundation for Dreamers** (giving primarily for health care, humanitarian issues and
education).
- **The Marguerite Home** (giving financial assistance to needy, elderly single women living
in the Sacramento area).
- **The Mirror Foundation** (giving primarily for subsidizing housing costs for low-income
tenants and for providing child care funds for low-income parents).
- **Tom Coughlin Jay Fund Foundation** (assist children with leukemia and other cancers
and their families during the course of their illness and other support for clinical and
laboratory research in leukemia and other childhood cancers that will be of benefit to
these children and their families).

- 1 • **Vonder Linden Charitable Trust** (grants are given for the purpose of paying bills, rent
2 or other expenses).
- 3 • **William Babcock Memorial Endowment** (grants or loans only for Marin County, CA
4 residents for medical expenses that are extremely excessive in relation to income and are
5 not covered by public programs or health insurance).
- 6 • **American Home Buyers Alliance Foundation** (giving primarily to assist and educate
7 families trying to buy personal residences, with grants made directly to homebuyers).
- 8 • **Burks Charitable Trust** (financial assistance including medical expenses to needy
9 families in CA).
- 10 • **Chronicle Seasons of Sharing Fund** (donations for critical family needs, housing
11 assistance, and food programs and distributes the donations to help people in need
12 throughout the greater San Francisco Bay area, California).
- 13 • **Friends It Is Foundation** (grant awards to the indigent and economically disadvantaged
14 in San Diego and Los Angeles counties, CA).
- 15 • **Hallie St. Mary Trust** (support only for financially needy women who are sick or
16 infirm).
- 17 • **Isaac H. Tuttle Fund** (fund gives direct support to elderly individuals with the goal of
18 enabling older persons to continue living in their own homes so long as they are
19 physically and mentally able to do so).
- 20 • **Kadah Foundation** (supporting organizations involved with human services and Islam
21 and awards grants to indigent individuals).
- 22 • **My Childs Hand Foundation** (giving primarily for pediatric cancer patients).
- 23 • **Otto Sussman Trust** (giving residents of NJ, NY, PA and OK who, in the opinion of the
24 trustees, are in need of financial assistance due to death or illness in their immediate
25 families or some other unusual or unfortunate circumstance).
- 26 • **Society for Relief of Women & Children** (awards grants to women with or without
27 children who, after leading productive lives, are unable to adequately support themselves
28 due to circumstances beyond their control).
- **Mary Oakley Foundation** (provides funding for indigent individuals diagnosed with
dementia, Alzheimer's Disease or related disorder to stay at residential care facilities).
- **The San Francisco Family Foundation** (providing goods, clothing, rent, home care, and
medical supply reimbursements for elderly individuals (over 62 years of age) through
social service agencies, applicants must have helped others during their lifetime and now
find themselves in need and assistance and reside in San Francisco, CA).

(Ex. 10). But for space constraints, the list could go on and on.

2. Government Grants are Available to Individuals for Personal Expenses.

a. Examples of Government "Grants" Available for Personal Expenses.

Government grants identifiable through the Grant Program are available to individuals to pay for personal expenses, including the following

- **Homelessness Prevention and Rapid Re-housing Program** (federal program funded with \$1.5 billion to provide “grants” to help keep individuals and families in their homes or help them find other affordable housing after a sudden financial crisis. An individual’s utility expenses can be paid as part of the assistance. As of December 2010, 40% of the HPRP funds had been distributed to individuals.) (Ex. 11).
- **USDA Very Low-Income Housing Repair Program** (federal program which provides “grants” of up to \$7,500 to qualifying homeowners to repair, improve, or modernize their dwellings). (Ex. 12).
- **Department of Labor Self-Employment Assistance** (federal program which pays individuals weekly allowances while they are getting their own small business started). (Ex. 13).
- **Federal Supplemental Educational Opportunity Grant** (federal grant ranging from \$100 to \$4,000 a year for undergraduates with exceptional financial need) (Ex. 14).
- **Rebate for Elderly/Disabled Renters Tax Relief Program** (Connecticut state “grant” providing from \$700-\$900 for reimbursement of rent and utility bills) (Ex. 15).

b. Grants.gov and GovBenefits.gov

The websites operated by the federal government at Grants.gov and GovBenefits.gov acknowledge that government grants are available to individuals for personal expenses.

The “Frequently Asked Questions” section at Grants.gov includes the following language:

Q: As an *individual*, how can I apply for federal or state grants, assistance, or benefits?

A: * * * * *

An individual grant applicant is defined as an applicant who is submitting a grant ***on their own behalf*** and not on behalf of a company, state, local or tribal government, academia, or other type of organization. An individual grant applicant can now use Grants.gov to search and apply for, as well as to submit grants.

* * * * *

Q: As an individual, how do I find information on federal and state grants, benefits, or assistance? *Where can I search for grants or assistance to pay off debt, bills, or medical costs?* Where can I find information on government benefits that I may be eligible to receive?

A: If you are an individual looking for information on government benefits, refer to GovBenefits.gov, the official government benefits website, a free, confidential tool that helps individuals find government

benefits they may be eligible to receive, as well as information on how to apply.

(Ex. 16) (emphasis added).

Clicking on the [GovBenefits.gov](#) hyperlink leads to the home page for [Benefits.gov](#), which contains a representation that users of the site can “Learn about FREE MONEY and GRANTS”.

(Ex. 59) (emphasis in original). The language “FREE MONEY and GRANTS” is a hyperlink that leads to a page on the website with the following question-and-answer colloquy:

Q: What should I know about Free Money and Grants?

A: **Free Money**

Many people arrive at Benefits.gov after seeing unofficial advertisements that might have them thinking that the government will give “free money” to essentially *anyone* for *anything*. [emphasis in original] The government will not give you money just because you ask for it.

Here are some facts about getting government assistance that some ads may not mention:

The government provides assistance through benefit programs that serve various important purposes, such as job training, nutritional assistance, education, health care and other needs.

In order to receive government assistance you must complete an application and meet specific eligibility requirements as outlined by each program.

Not all assistance programs provide cash payments. Assistance programs that provide payments may have conditions and limitations.

Now, what can Benefits.gov do for you? As the official benefits website of the U.S. government, we can help you start your benefits search by connecting you to assistance programs you may be eligible to receive.

* * * * *

Grants

Government grants are awards of financial assistance to an individual and/or organization. Grants are used to carry out a government authorized purpose, and are not provided as personal benefits or assistance.⁶ Benefits.gov does not provide information on grants.

⁶ This sentence does not mean that government grants are not available to individuals for payment of personal expenses, but rather that they are only available when the payment of the personal expense coincides with a “government authorized purpose”, such as education, preventing homelessness, etc.

(Ex. 59) (emphasis added, except where noted otherwise).

The consumer's interest in obtaining federal grants for personal expenses is further aroused by the government's tantalizing series of "frequently asked questions":

As an individual, how do I find information on federal and state grants, benefits, or assistance? Where can I search for grants or assistance to pay off debt, bills, or medical costs? Where can I find information on government benefits that I may be eligible to receive?

The government's response to these questions is telling. Instead of an unambiguous statement that federal grants are not available to pay off "debt, bills, or medical costs", the government directs the consumer (with a hyperlink) to another government website at GovBenefits.gov. On the front page of GovBenefits.gov, the consumer encounters the language "Learn about FREE MONEY and GRANTS". (Ex. 59) (emphasis in original).

Clicking on the hyperlink associated with the words "FREE MONEY and GRANTS" leads the inquiring individual to a page at which the government states that while the government will not just give a federal grant to "anyone for anything", the government does "provide assistance through benefit programs that serve various important purposes, such as job training, nutritional assistance, education, health care and other needs." The "other needs" referred to are presumably personal needs, just as job training, nutrition, education and health care are. The consumer is further informed that some "assistance programs provide cash payments", although not all do.

The cumulative message to consumers is that federal money, whether called a "grant" or "assistance", can be obtained by qualifying individuals to pay for at least some personal expenses, such as job training, medical, educational, etc.⁷

D. Defendants Never Represented that Consumers Using the Grant Program are "Likely" to Find Government Grants to Pay Personal Expenses.

⁷ Grants.gov does state that "[a]lthough there are many grants on Grants.gov, few of them are available to individuals and none of them are available for personal financial assistance." But that statement must be viewed in the context of the Grants.gov site expressly sending individuals looking for assistance with personal expenses to the GovBenefits.gov website—which does *not* have a "personal expenses" disclaimer comparable to the one on Grants.gov, and informs users that the government does "provide assistance through benefit programs that serve various important purposes, such as job training, nutritional assistance, education, health care and other needs."

1 The FTC contends that iWorks' deceptive practices regarding the Grant Program include the
 2 representation that consumers are "likely" to obtain grants to pay personal expenses. Mot. at 9:6-
 3 11:8. Yet the FTC does not cite to any landing page, order page or website that claims that users of
 4 the Grant Program are "likely" to obtain grants to pay personal expenses.

5 The only evidence offered by the FTC in support of its "likely" claim are various
 6 representations such as "Locate & apply for cash using our FREE software!" Mot. at 9:11. Such
 7 representations do not suggest anything about the probability of obtaining grants to pay personal
 8 expenses.

9 **E. The Grant Program Testimonials Can be Substantiated.**

10 The FTC argues that the testimonials used in connection with the Grant Program are false
 11 because none of the declarants actually received a government grant. Mot. at 11:9-13:11. According
 12 to the FTC, the only source from which the declarants received a grant of any sort was from a
 13 nonprofit entity set up by iWorks in connection with the Grant-A-Day program.

14 The only evidence proffered by the FTC in support of these allegations is that: (a)
 15 Defendants' nonprofit entity transferred money to the winners in the Grant-A-Day program in 2007-
 16 2008; and (b) only .04% of Grant Program users actually received grants. Mot. at 12:4-13:11. That
 17 evidence, however, says nothing about whether the testimonial declarants actually received
 18 government grants.

19 **1. Testimonials from Recipients of the Grant-a-Day Program Were Not**
 20 **Misleading.**

21 The landing page and order page testimonials in support of the Grant Programs were
 22 authentic submissions from recipients of the Grant-a-Day Program. The Grant-a-Day Program was
 23 established as a benefit to members of the iWorks membership-based grant website. The Grant-A-
 24 Day program was developed through a strategic partnership with a local non-profit organization
 25 called New Frontiers For Families. iWorks customers who enrolled in one of its Grant Programs
 26 were thereby eligible to apply for a grant from the Grant-A-Day Program. Users were provided with
 27 access to an online application. The program was administered by New Frontiers For Families; they
 28 selected the winners from among the applicants and sent checks directly to the winner. As the name

1 suggests, a grant was awarded literally each day (836 grants awarded in total) and iWorks Grant
2 Program members were eligible to re-apply every 60-days. Payne, ¶ 15.

3 From August 2007 to January 2010, the Grant-A-Day program successfully awarded 836
4 different grants totaling over \$700,000. These grants provided critical resources to struggling
5 families and the elderly. For example, grants were awarded to help a disabled man pay for
6 chemotherapy (Grant No. 332); to help struggling families purchase heating oil (Grant Nos. 442,
7 830), avoid foreclosure on their homes (Grant Nos. 81, 100, 1 33, 1 34, 1 44, 146, 314, 315, 322, 32
8 etc.) and pay medical bills (Grant Nos. 33, 35, 45, 6 0, 6 1, 6 5, 5 65, 5 10, 5 11, 5J6, 585, 6 01, etc.);
9 to fund a crisis center for Battered women (Grant Recipient No. 13); and to help a single mother of
10 three children to provide children's beds, stove and furniture (Grant Recipient No. 32). Payne, ¶ 16.

11 Grant-a-Day was an ongoing program until nearly the day that iWorks ceased marketing its
12 Grant Programs. By enrolling in any of iWorks's Grant Programs, its customers became eligible to
13 apply for the same, ongoing benefit described in these testimonials. Payne, ¶ 16. Pages containing
14 these testimonials, moreover, were nearly always used on pages advertising private (not just
15 government) grant money and accompanied by "results not typical" or "results may vary"
16 disclaimers. (*See, e.g.*, Grant Advisor landing page at Ex. 1 (advertising "Private and Federal
17 Grants" and including "Results May Vary" asterisk at each testimonial); Grant Professor landing
18 page at Ex. 3 ("There are over 1,000 Federal and 50,000 Private Grants" and including "Results May
19 Vary" asterisk after each testimonial"); Fast Grants landing page at Ex. 6 (advertising program to
20 search for a "Government or Private Grant" and including "Results Not Typical" asterisk after each
21 testimonial).) This language is typical, indeed nearly universal, of the Grant Program pages.

22 iWorks, moreover, never had any intention to hide the fact that these testimonials related to
23 the Grant-a-Day Program. To the contrary, iWorks always regarded the Grant-a-Day Program as a
24 selling point. Several Grant Program landing pages actually described the Grant-a-Day Program in
25 detail and/or included the "Grant-a-Day" logo. Payne, ¶ 17. Thus, at a landing page for the Grant
26 Generator program, after some general claims about "private and federal grants," the following
27 language appeared, truthfully touting the benefit of Grant-a-Day Program eligibility:
28

Exclusive to our Members:
The Grant-A-Day Program!

This amazing program delivers a grant to one of our members EVERY DAY! We're the only Grant program that can do this. As a member of our site you are automatically eligible for the **Grant-A-Day™** program.

These are just some of the people we've been able to help. They're regular people just like you whom we've helped get money for bills, mortgages, tuition, home repairs and a variety of personal needs.

(Grant Generator landing page at 5.) Another landing page touted, "We guarantee at least one member of the Grant Search Assistant™ program will be awarded a personal needs grant every single day." (Grant Search Assistant landing page at 004.) Most of the testimonials referred expressly to the Grant-a-Day Program by name. (*See, e.g.*, Grant Advisor landing page at 001 ("Thanks to Grant-A-Day my wife and I" and "Thank you so much for awarding me a \$500 Grant from the Grant-A-Day program."); Grant Generator landing page at Ex. 5 (same); Grant Member Site landing page at Ex. 17 (same).) Thus, iWorks did not hide the nature of these testimonials, and the Grant-a-Day program was, if anything, a tangible bonus of Grant Program membership that was prominently featured by iWorks.

Furthermore, iWorks made diligent efforts to police the use of testimonials by its brokers. (*See, e.g.*, B. Payne email to all marketing partners, April 29, 2008 at Ex. 18 ("Testimonials must be verified and approved"); iWorks Site Compliance Report dated 6/17/2009 at Ex. 19 ("Remove bogus testimonials that are not documented and cannot be substantiated."); *id.* ("Are all the testimonials true? We need documentation.")) The Grant Program testimonials were not misleading, and iWorks took serious steps to ensure that any misleading testimonials added by affiliates were removed.

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1 **2. The Percentage of Grant Program Users Who Actually Obtained a Grant**
 2 **is Unknown.**

3 The FTC contends that very few users of the Grant Program actually obtained grants.
 4 Specifically, the FTC contends that only .04% of Grant Program users actually obtained a grant.
 5 Mot. at 13:1-7.

6 First, iWorks never guaranteed that users would actually obtain grants, nor did iWorks ever
 7 represent that most or many users would obtain grants. Rather, iWorks made it very clear that users
 8 “may” receive a grant. Nothing in the landing or order pages suggested that receipt of a grant was a
 9 certainty, and certainly no reasonable consumer would have believed that. (*See, e.g.*, Grant Master
 10 landing page at Ex. 20 (“Not everyone can get a grant, but don’t you owe it to yourself to at least see
 11 if there’s anything available for you?”); Grant Professor landing page at Ex. 03 (“information about
 12 how and where to access grant money that may be available”).)

13 Second, the FTC’s “.04%” figure is ridiculous. The figure is apparently based on a study the
 14 FTC conducted of one of the 88,000+ grants identified in the Grant Program. The truth is that no one
 15 knows exactly how many Grant Program users actually obtained grants, as no one tracked that
 16 information. Payne, ¶ 18.

17 **F. The FTC Cannot Prove that the Alleged Mispresenations Were Material.**

18 The FTC has failed to establish the materiality of iWorks’ alleged misrepresentation
 19 regarding the availability of government grants to individuals for personal expenses. In order to
 20 establish a Section 5(a) violation, the FTC must prove that the allegedly misleading representation is
 21 material. *F.T.C. v. Medlab, Inc.*, 615 F.Supp.2d 1068, 1081 (N.D. Cal. 2009) (citing *FTC v. Gill*,
 22 265 F.3d 944, 950 (9th Cir. 2001). “A misleading impression created by a solicitation is material if it
 23 involves information that is important to consumers and, hence, likely to affect their choice of, or
 24 conduct regarding, a product.” *F.T.C. v. Cyberspace.Com LLC*, 453 F.3d 1201 (9th Cir. 2006).

25 There is no evidence, or reason to suspect in the absence of evidence, that consumers actually
 26 cared whether the money they hoped to receive from a “grant” came from a government or private
 27 source. Given the abundance of grants that can be used to pay personal expenses, whether the
 28 landing pages expressly mentioned the availability of private grants in addition to government grants

1 is immaterial. The Commission does not identify any reason why consumers should care about the
2 source of grant money. Consumers interested in grant money to pay personal expenses would have
3 found the Grant Program equally useful, regardless of whether the relevant grants were from public,
4 rather than private funds.

5 Further evidence that the alleged misrepresentations were not material is provided by the
6 Commission's expert David Bauer. According to Mr. Bauer, consumers came to the Grant Program
7 landing and order pages already under the misperception that government grants are more available
8 to individuals for personal expenses/needs than they really are. Bauer, ¶ 24 ("The first
9 misconception is that the federal government will fund individuals for their personal
10 expenses/needs"). According to Mr. Bauer, this and other misconceptions about grants are
11 "widespread" and "transcend educational levels and occupational experience." Bauer, ¶ 22.

12 Since the consumer already believed that individuals could obtain government grants for
13 personal expenses before encountering iWorks' landing and order pages, iWorks could not possibly
14 have misled anyone by allegedly representing that government grants are available to individuals to
15 pay for personal expenses. If Mr. Bauer's opinion is credible, then iWorks' alleged
16 misrepresentation regarding government grants and personal expenses would have had no effect on
17 the purchasing decision, since it was merely duplicative of information, true or false, already in the
18 possession of the consumer—no one's mind was changed by iWorks' alleged misrepresentation. The
19 Commission is accordingly unable to establish that iWorks' alleged misrepresentations were a
20 material factor in the purchasing decision.

21 **H. Dr. Porter's Report.**

22 Dr. Porter opines that the Grant Program had no value because individuals were not likely to
23 obtain the grants identifiable through the membership website. That opinion, however, is seriously
24 undercut by the fact that Dr. Porter worked for iWorks for almost three years and was paid
25 approximately \$150,000 to add value to the Grant Program. Presumably, Dr. Porter would have
26 terminated his consulting agreement with iWorks, or never entered into the agreement in the first
27 place, if he actually believed the Grant Program had no value to consumers; otherwise, he would be a
28

1 key cog in the “well-oiled fraud machine” being sued by the Commission, especially since he was the
2 grant “expert” pitching the Grant Program in numerous marketing materials.

3 Dr. Porter’s opinion regarding the value of the Grant Program is further undercut by an email
4 he sent to iWorks’ Operations Manager, Bryce Payne, in which he admitted that the Grant Program
5 had value and was worth the monthly subscription fee of \$39:

6 It is a very good benefit for people who do not know anything
7 about grants to make a selection and to see what is out there. It is
definitately [sic] worth \$39, maybe even a little more to some.

8 Ex. 21.

9 Further undercutting Dr. Porter’s opinion regarding the value of the Grant Program is the fact
10 that Dr. Porter asked iWorks for a copy of the Grant Program database so that he could re-sell it.
11 Payne, ¶ 46. Again, that action is congruent with a belief that the Grant Program had no value.

12 **I. Bauer’s Report.**

13 Bauer does not find the Grant Program very useful, but that is not surprising given that he is a
14 grant professional. The Grant Program was not marketed to grant professionals who already know
15 where to look for grants and how to obtain them, but rather to lay people who know nothing about
16 what grants might be available to them and want to learn. Bauer does not contradict that the Grant
17 Program at least achieves that objective.

18 Bauer states that he is not aware of any instance where a federal or state government grant
19 was awarded directly to an individual to pay for personal needs, except for scholarships and arts
20 grants. It appears that Bauer is playing a game of semantics. Government money, whether labeled a
21 “grant” or “assistance” by grant professionals like Bauer, indisputably is available to individuals to
22 pay for personal needs like housing, job training, etc., as discussed above.

23 Bauer then gives an account of his investigation of the fastgovgrants.com membership
24 website. Among other things, Bauer claims to have received 0 hits on a search he ran for some
25 common personal expense items: credit card repayment, debt reduction, Christmas presents, etc. Had
26 Bauer searched the private grants section of the grantdirector.com website, which is more up to date
27 than fastgovgrants.com, he would have found the following results for the specified terms: “medical”
28 4,399 grants; “healthcare”, 284 grants; “housing”, 1,110 grants; “utilities”, 18 grants; and “bills”, 46

1 grants. Payne, ¶ 47. Thus, Bauer's conclusion that the Grant Program offers no private grants
2 available to pay personal expenses is simply wrong.

3 **III. IWORKS' INCOME GENERATION PROGRAMS DID NOT VIOLATE THE FTC** 4 **ACT**

5 iWorks offered instructional programs to generate income through advertising in connection
6 with search engines such as Google (the "Income Generation Program"). The Commission alleges
7 that the advertisements for the Income Generation Program overstated the amount one could earn by
8 using the programs.

9 However, most of the Income Generation Program landing pages that were actually presented
10 to consumers made no specific earnings claims at all. Further, any specific dollar amounts mentioned
11 on the landing pages were based on earnings that the developer of the program himself had made by
12 using the technique that the program teaches and were no higher than earnings claims mentioned on
13 the Google AdWords and AdSense sites themselves. Nonetheless, insofar as any landing or order
14 pages suggested that specific amounts would be earned by using the program, iWorks demanded that
15 the affiliate marketers responsible for such language remove it. Payne, ¶ 19.

16 The Income Generation Program taught customers to create ads using Google's AdWords and
17 AdSense advertising programs, and provided guidance on ad placement, tips on driving online traffic
18 through their websites to other sites, and similar advice. The content for the Income Generation
19 Program was developed by Steven Holdaway, a search engine marketing expert who is certified as a
20 Google advertising professional, a Yahoo search marketing ambassador, and is the author of *G*
21 *Money Pro* and *G Money Pro 2: How to Get Rich With Google Adwords* (G Money Pro 2010).
22 Payne, ¶ 20.

23 Using AdWords and AdSense, Mr. Holdaway made hundreds of thousands of dollars through
24 Google; he then wrote a program teaching others how to duplicate his success. iWorks purchased the
25 rights to host Mr. Holdaway's system on its Income Generation Program members' site, which Mr.
26 Holdaway regularly updated. Customers who paid the monthly subscription rate for web access
27 received the ongoing benefit of Mr. Holdaway's Internet-advertising expertise, and live customer
28

support. iWorks paid Mr. Holdaway \$5,000 per month for his services, and in total paid Mr. Holdaway \$210,000. (Ex. 22); Payne, ¶ 21.

The landing and order pages for these programs in most instances did not contain any claims resembling those alleged by the Commission. Specifically, consistent with iWorks's compliance guidelines the pages avoided making any specific earning promises, but rather focused on what the programs would "teach" and what consumers could "learn." The pages generally promoted the benefits of working from home and earning supplemental income without promising or guaranteeing specific results. For example,

- A landing page for Click Money claimed, **"YOU COULD MAKE A LOT OF MONEY WORKING FROM HOME USING GOOGLE,"** and **"Learn everything you need to know about generating income with Google Adwords,"** and additional claims like **"work when and where it's convenient for me!"** and **"stop living paycheck to paycheck!"** Neither that page nor the accompanying order page promised any specific dollar income would be achieved. (*See* Order and Landing Pages for Click Money at Ex. 23).
- A landing page for Google Money Profit touted that **"Search Engine Traffic is the hottest new trend on the Internet,"** and that **"Our exclusive program will teach you the easiest and best ways to advertise using Google Adwords™ to make money!"** The earnings claims were general and noncommittal—"Make some extra money!" and **"you could be making money tomorrow!"**, and even then qualified by a disclaimer **"results may vary."** The page also made the vague claim that the program was **"Fast! Easy! Fun!"** The order page similarly touted **"Learn how to make extra cash,"** without promising any particular (or even general) results. (*See* Order and Landing Pages for Google Money Profit at Ex. 24).
- A landing page for Growing Rich Using Google claimed the program **"will teach you the easiest and best ways to advertise on Google™ to make money!"** and that the software **"will teach you how to use Google™ Advertising to tap into their HUGE online market potential."** It also promised the program was **"Fast! Simple! Fun!"** Neither that page nor the associated order page promised consumers they would make any specific income figures. (Order and Landing Pages for Growing Rich Using Google at Ex. 24).

The only message consumers could reasonably take away from these pages is that iWorks offered programs that could teach consumers how to use search engine marketing potentially to earn extra income.

Such general income claims, and indeed even some specific dollar income claims, were fully substantiated. It is beyond dispute that Google AdSense program pays commissions to web publishers in exchange for allowing Google to run ads for its advertising clients on those sites. It is also beyond dispute that many e-commerce and traditional businesses offer affiliate programs that

will pay individuals to drive traffic through their site (which in turn can be accomplished through Google's AdWords program). Mr. Holdaway has used the same techniques taught in his program (developed through years of trial and error) to generate revenues far greater than the dollar figures (rarely) cited in iWorks's landing pages.⁸ Thus, claims that Income Generation Program purchasers could learn to make somewhere between \$200 and \$900 per day were appropriate.⁹ And certainly more modest claims like "learn how to make \$199 per day" or "5000 or more per month" are fully supportable. Although most consumers made less, none of iWorks's customers could have reasonably believed (and iWorks certainly never claimed) that the Income Generation Program provided assured income.

IV. THE TERMS OF IWORKS' OFFERS WERE DISCLOSED IN ACCORDANCE WITH FTC GUIDELINES

A. Applicable Disclosure Standards.

The Commission has issued guidelines regarding free trial memberships and negative option plans specifically. *See* Fed. Trade Comm'n, *Could Free Trial Offers Be 'Fee' Trial Offers in Disguise?* (accessed at www.FTC.gov website on Oct. 21, 2010); *see also* Fed. Trade Comm'n, *Negative Options: A Report by the Staff of the FTC's Division of Enforcement*, at 26-28.¹⁰ These guidelines advise businesses to (a) disclose material offer details in an understandable way, (b) disclose material offer details before the consumer pays or incurs a financial obligation, (c) obtain a consumer's affirmative consent to the offer, and (d) make sure that cancellation procedures work efficiently and as promised.

The Electronic Retailing Association's ("ERA") Advance Consent Marketing Guidelines suggest additional disclosure practices to online sellers, practices that are even more demanding than those provided by the FTC. (Ex. 27). The ERA proposes that the fundamental principles of advanced consent marketing are (1) complete **notice** of material terms and conditions by disclosure in a clear and understandable manner, and (2) clear and affirmative **consent** of consumer to offer after all

⁸ *See* <http://www.stevenholdaway.com/about> (Ex. 25)

⁹ Case studies on Google AdSense reveal that substantially larger sums were being earned using the AdSense tool. *See Google AdSense Case Study* regarding Tim Carter, "Tim's AdSense revenues now average \$1400 a day and growing." (*See* <https://www.google.com/adsense/static/en/AsktheBuilder.html>, at Ex. 26).

¹⁰ (available at http://www.retailing.org/advanced_consent_marketing_guidelines, last accessed on Oct. 22, 2010).

1 material terms and conditions disclosed. *Id.* at 2. The content for sufficient notice must include, for
2 all advance consent plans: (1) the identity of the seller; (2) the cost of goods and services; (3) the
3 manner in which the consumer will be charged; (4) the frequency with which the consumer will be
4 charged; (5) disclosure that the consumer has an affirmative obligation to cancel; and (6) instructions
5 on how to cancel. *Id.* at 2.

6 For free-to-pay conversion programs, the ERA advises online marketers to disclose (1) the
7 fact that the service will continue unless the consumer cancels, (2) the length of the subsequent
8 renewal or billing term, (3) the cost after the free trial period, and (4) the length of the free trial
9 period. *Id.* at 3. The consumer must clearly and affirmatively consent to the offer, and all material
10 terms and conditions must be disclosed before the consumer provides consent or incurs any financial
11 obligation. *Id.* at 5.

12 In a different legal context, courts have found that online consumers must be assumed to have
13 read disclosures placed in proximity to a submit button on a webpage. The Fifth Circuit's recent
14 affirmance in *In re VistaPrint* is highly instructive. *In re VistaPrint*, 2009 U.S. Dist. LEXIS 77509,
15 at * 20 (S.D. Tex. Aug. 31, 2009), *aff'd*, *Bott v. VistaPrint USA, Inc.*, 2010 U.S. App. LEXIS 17634
16 (5th Cir. Aug. 23, 2010) (per curiam). In *VistaPrint*, the enrollment pages for a negative option
17 program sold on an upsell basis displayed content that was far more prominent than the page's
18 description of the membership program or negative option terms. The pages were focused on a \$10
19 cash back reward on the customer's preceding purchase and, in certain pages, a customer survey.

20 The court held that a consumer may not decline to read clear and conspicuous terms that are
21 provided "on the same webpage in close proximity to the location where the consumer indicates his
22 agreement to those terms and then claim that the webpage, which the consumer has failed to read, is
23 deceptive." *Id.*; *cf. also*, *Pacholec v. Home Depot USA, Inc.*, No. 2:06-cv-00827-PGS-ES, 2007 WL
24 4893481, at *5 (D.N.J. July 24, 2007); *Tarallo-Brennan v. Smith Barney*, No. 1:97-cv-07257-DAB,
25 1999 WL 294873, at *3 (S.D.N.Y. May 10, 1999) (rejecting plaintiffs' attempt to avoid contract
26 terms as deceptive where relevant information was provided in "a clear and legible manner" but
27 plaintiffs did not read full agreement); *Baxter v. Intelius, Inc.*, No. 09-1031 AG (MLGx), 2010 WL
28 3791487, at *3-5 (C.D. Cal. Sept. 16, 2010).

B. iWorks' Disclosures for its Programs Complied with the Applicable Standards.

The key terms and disclosures for the iWorks products comply with the above standards. The negative option disclosures were displayed on every order page, almost always in close proximity to the submit button, and usually within the same boxed area as the Submit button and order information. (In virtually all other instances, the disclosures were directly adjacent to it.) The disclosures generally included (i) the fact of the trial program enrollment, (ii) the length of trial period, (iii) the fact that the consumer would be charged "thereafter" and if she chose not to cancel, (iv) the amount of the charges, (v) the fact that the charges were monthly, and (vi) the fact that the charges would be billed to the same credit/debit card. Payne, ¶ 42. For example:

- Income Generation Program order page at Ex. 23 ("By ordering, I am clearly indicating that I give express informed consent to acceptance of the offer, including enrollment in the negative option programs and that I am being charged \$39.95 a month for the membership.".)
- Income Generation Program order page at Ex. 23 (in large-font bold letters above the order information, "You May Cancel Anytime".)
- Grant Program order page at Ex. 28 ("By ordering, I am clearly indicating that I give express informed consent to acceptance of the offer, including enrollment in the negative option programs and that I am ordering the Fast Grants CD™ for \$2.99, and also being enrolled in the trial membership. After the 5 day trial, I will be charged \$39.95 a month thereafter if I do not cancel.".)
- Grant Program order page at Ex. 29 ("By clicking 'Submit', I am ordering the Your Federal and Private Grant CD™ and trial membership for \$2.99 S&H, after the seven day trial I will be charged \$39.95 a month thereafter if I do not cancel.".)

Additional disclosures could be found in the expanded Terms and Conditions that were readily available to consumers from a link at the landing page and order page, always close to the Submit button. The expanded Terms and Conditions would state that the consumer was agreeing to all of the trial periods outlined on the order page, and typically would go on to explain that the consumer was entering into a negative option program that would involve recurring charges after a free trial period unless the membership was cancelled. The duration of each free trial period and the amount of the recurring charge were also specified. *See, e.g.*, JRS Media Terms & Conditions at Ex. 30.

The order page, in turn, explained that, by clicking the button to submit an order, the consumer was representing that she had read and was agreeing to those Terms and Conditions. Many

1 order pages also required the consumer to check a box confirming that she had read and agreed to the
 2 Terms and Conditions. In some instances, the landing page even contained a check box confirming
 3 agreement to the Terms and Conditions as a necessary step before even proceeding to the order page.
 4 (*See, e.g.* Income Generation Program order page at Ex. 31).

5 Finally, the membership programs were repeated again in confirmation pages and thank-you
 6 emails that the consumers saw after their order had been submitted. The confirmation page would
 7 list the name of the customer and the customer's credit or debit card number, along with a list of
 8 every item the customer had purchased. For each program, the page identified a member log-in
 9 URL, a user name, a password, the length of the free trial period, and the amount of the monthly
 10 membership when the free trial ended. (*See* Sample Order Confirmation Page at Ex. 32). In
 11 addition, the confirmation page provided the customer service number. This information was
 12 provided for every item, including upsells. The thank-you email would contain the identical
 13 information in an easily-understandable format. (*See* Sample Thank You E-Mail and Confirmation at
 14 Ex. 33).

15 **C. iWorks' Disclosures for the Bundled Upsells Complied with the Applicable**
 16 **Standards.**

17 The Commission alleges that iWorks' upsell marketing partners did not make sufficient
 18 disclosures in connection with the upsell of iWorks' products.¹¹ Mot. at 20:14-22:8. While there
 19 may have been isolated incidents in which disclosures did not meet iWorks' standards, in the vast
 20 majority of instances when a product was paired with an upsell, the order page's terms and
 21 disclosures identified (i) the name of the upsell program, (ii) the length of trial period, (iii) the fact
 22 that the consumer would be charged "thereafter" if he chose "not to cancel," (iv) the amount of the
 23 charges, (v) the fact that the charges were monthly, and (vi) the fact that the charges would be billed
 24 to the same credit or debit card used for the shipping and handling charge. This information was also
 25 typically reiterated in the expanded Terms and Conditions. Payne, ¶ 43. For example:

- 26 • Ex. 31 ("I also agree to the 14 day and 21 day bonus trials of Rebate Millionaire™
 27 and Network Agenda™ for \$14.95 a month and \$9.95 a month respective thereafter,

28 ¹¹ iWorks did not begin the practice of placing its products as upsells on other merchants' sites until late 2008. Payne, ¶ 43.

1 should I choose not to cancel. My credit/debit card will be used to pay for these
2 membership programs”)

- 3 • Search Program order page at Ex. 23 (“By accepting either the 10 and/or 15 day bonus
4 trials to MyLegalLibrary and Network Agenda, I agree to be billed \$14.95 a month
5 and \$9.95 a month thereafter should I choose not to cancel. My credit/debit card will
6 be used to pay for these membership programs, and my account will be charged or
7 debited as applicable.”)
- 8 • Grant Program offer page at Ex. 28 (“I also agree to the 10 and 14 day bonus trial to
9 Track It Daily™ and Network Agenda for \$14.95 a month and \$9.95 a month
10 thereafter should I choose not to cancel. My credit/debit card will be used to pay for
11 these membership programs, and my account will be charged or debited monthly as
12 applicable.”)
- 13 • Grant Program order page at Ex. 29 (“I also agree to the fourteen day and twenty-one
14 day bonus trials to the Search Market Members Site™ and Network Agenda™ for
15 \$7.95 a month and \$9.95 a month thereafter, should I choose not to cancel.”)

16 The upsell programs were highlighted in other ways. The order pages contained prominent
17 call-out boxes with the names and logos for the upsell programs and a brief one-to-two-paragraph
18 description. (*See, e.g.*, Auction Program order page at Ex. 31; Search Program order page at Ex. 23;
19 Grant Program order page at Ex. 1; Grant Professor order page at Ex. 23; Fast Grants order page at
20 Ex. 6).

21 In many cases, these call-out boxes repeated the length of the trial and the price of the
22 membership. (*See, e.g.*, Auction Program order page at Ex. 31 (describing Rebate Millionaire
23 membership, repeating length of free trial (14 days) and \$7.95 monthly price); *id.* (describing
24 Network Agenda membership, repeating length of free trial (21 days) and \$9.95 monthly price);
25 Search Program order page at Ex. 23 (describing My Legal Library and Network Agenda
26 memberships, repeating length of free trials (10 days and 15 days)); Grant Program order page at Ex.
27 1 (describing Network Agenda and Track It Daily memberships, repeating length of free trials (14
28 days and 21 days)); Fast Grants order page at Ex. 6 (describing Network Agenda and Click Money
memberships and repeating length of free trials (14 days and 21 days)).)

These pages were certainly more transparent than the disclosures in the *VistaPrint* matter,
which were sufficient in that case to preclude consumer deception claims as a matter of law. (Copies
of the *VistaPrint* enrollment pages that accompanied its motion to dismiss are attached at Ex. 34). In
VistaPrint, consumers who made an initial purchase were directed to a page with a prominent offer

1 for a \$10 rebate. A boxed area provided space for consumers to enter their email address, in some
2 cases, to answer two or three “survey” questions. The box also included a large “YES” button and a
3 reference to “Offer Details” elsewhere on the page, *e.g.*, “By clicking ‘Yes’ I have read and agree to
4 the Offer Details displayed to the left and authorize VistaPrint to securely transfer my name, address
5 and credit card information to VistaPrint Rewards, a service provider of VistaPrint.” Only by reading
6 the “Offer Details” *outside* and adjacent to the boxed did area did the VistaPrint consumer learn that
7 clicking “Yes” would enroll her in a negative option plan—a 30-day free trial membership, with fees
8 of \$14.95 per month thereafter. As with iWorks’s upsell enrollment process, VistaPrint consumers
9 were not required to re-enter their credit card numbers for the additional item. Nor were the upsells
10 the most prominent feature of the enrollment page—the \$10 rebate offer and, on some pages, survey
11 questionnaires, occupied the main content. But the court recognized that consumers are not free to
12 ignore plainly posted disclosures merely because other items on a webpage are more eye-catching.
13 In light of the plain language and its close proximity to the Submit (or “Yes” button), the court held
14 the trial membership upsells were adequately disclosed.

15 **D. Due to the Clear and Conspicuous Disclosures, Many Consumers Timely**
16 **Canceled Their Memberships Before Incurring Any Charges.**

17 A substantial number of consumers canceled their orders during the trial period, before they
18 incurred any membership charges. Of the products relevant to the proposed Complaint, 26.9% of
19 memberships—more than 3,000,000 people—were canceled *during the trial period*. (See Analysis
20 Group Cancellation Analysis at Ex. 35). These cancellations demonstrate that consumers understood
21 the enrollments at the time of purchase. It is no surprise that even more consumers (having decided
22 they were interested in such memberships in the first place) decided to keep them beyond the trial
23 period. Of course, there were consumers who complained that they did not understand the
24 disclosures, but some high number of complaints was inevitable in light of the sales volume, no
25 matter how clear the disclosures were. The cancellation rates during the trial period belie any claim
26 that the iWorks business model was based on unwitting membership enrollments that were not
27 noticed until after expiration of the trial period.
28

1 In particular, the cancellation data utterly refutes the allegation that consumers were generally
 2 unaware of the upsell programs. Indeed, the percentage of purchasers who cancelled their upsell
 3 programs during the trial period (again, before any membership charges were posted) was 29.1% –
 4 actually *higher* than the in-trial cancellation rate for the core programs. (*See* Ex. 35). The upsells
 5 were not secretly buried in the offer terms. Although exceptions are to be expected, consumers
 6 generally understood they were enrolling in an upsell program, the terms of the programs, and
 7 procedures for canceling. In light of clear and conspicuous disclosures, iWorks’s offers for “Free”
 8 and “Risk Free” products were not deceptive.

9 iWorks also monitored its affiliate advertiser pages and intervened to ensure the relevant
 10 disclosures were clear and conspicuous. iWorks took corrective action when it discovered that
 11 brokers and marketing partners failed to comply with its strict and extensive policies regarding the
 12 negative options disclosures and membership enrollments. (*See, e.g.*, B. Payne email to all marketing
 13 partners, April 29, 2008 at Ex. 18 (“Disclaimer MUST be in the vicinity of the submit button
 14 ABOVE the fold of the page where the button resides.”) (emphasis in original); *id.* (“Up sales MUST
 15 be in the vicinity of the submit button ABOVE the fold of the page where the button resides”)
 16 (emphasis in original); iWorks Site Compliance Report dated 6/17/2009 at Ex. 36 (“Upsell boxes
 17 should be closer to the Submit button.”); *id.* at p.4 (“There needs to be more on the \$39.95 trial
 18 membership” on the order page); H. Johnston (iWorks) email to E. Mortensen (Virgin Offers), Dec.
 19 18, 2009 at Ex. 37 (“In any type of ‘shopping cart’ box, you must include our ‘Up-sell/ ??-day
 20 trial.”); H. Johnston email to E. Mortensen, Dec. 18, 2009 at Ex. 38 (“Can you guys check all your
 21 product codes please? . . . I have had a few instances where an upsell is not mentioned in the T&C
 22”).

23 **E. iWorks Promptly Handled Cancellation Requests.**

24 In contrast to many FTC cases involving companies that offer trial periods and risk free
 25 guarantees,¹² the FTC has never alleged that iWorks failed to refund customers promptly or that
 26 iWorks made it difficult for customers to cancel their memberships. The company’s policy,
 27

28 ¹² *See, e.g., F.T.C. v. Hudson Berkley*, CV-S-02-0649-PMP-RJJ (D. Nev. May 7, 2002); *F.T.C. v. United Fitness of Am.*, CV-S-02-0648-KJD-LRL (D. Nev. May 7, 2002).

1 reiterated in print and in every training session, was that “No customer leaves unhappy.” To that end,
2 iWorks made it a top priority to handle customer service calls promptly and professionally, and
3 instructed customer service agents not to end a call until the customer indicated she was satisfied
4 with the result. This rule applied regardless of the reason for the call. Payne, ¶ 22.

5 To ensure these standards were met, iWorks created a number of rules and reporting tools.
6 As soon as a caller placed a call, the company tracked whether the caller landed in a queue or reached
7 an agent immediately. If any caller hung up while waiting in the queue, an iWorks agent would
8 promptly call her back. The company also tracked call volume, hold times, abandons and other
9 metrics to ensure that the average hold time was no greater than six seconds with 24-hour customer
10 service. In addition, the company placed hourly calls to every toll free number every day to ensure
11 the customers could reach customer service. Payne, ¶ 23.

12 Agents were closely supervised. Supervisors would walk the floor to monitor for problems or
13 incorrect information. Agents who under-performed were required to undergo additional training.
14 All calls were recorded, and every agent would have 5 calls per week randomly selected for review.
15 Agents who performed poorly on these calls were sent to retraining or were terminated. In addition,
16 each agent was regularly graded according to ten separate criteria for ensuring that every customer
17 would be satisfied with the outcome of the call. Payne, ¶ 24.

18 Another team would go through the complete online sales process to ensure that the sites
19 worked as they should and that every aspect of the purchase occurred as it should, including delivery
20 of the CD, receipt of the thank-you e-mail, and prompt and accurate answers from chat
21 representatives.¹³ These “secret shoppers” submitted weekly reports. Payne, ¶ 25.

22 All of these customer service efforts made it easy and efficient for customers to cancel their
23 memberships and to obtain refunds upon request. iWorks customer service representatives received
24 extensive training regarding refund and cancellation procedures and were consistently monitored to
25 ensure they followed those guidelines as well. According to iWorks’s policy, after a soft rebuttal,
26
27

28 ¹³ As part of this process, secret shoppers would set up email accounts through the major ISPs and use those accounts to purchase iWorks programs. If a thank-you email did not arrive, iWorks would contact the ISP and request that the ISP remove any automatic blocking of emails relating to iWorks. Payne, ¶ 25.

agents were permitted to refund the consumer up to three charges for each product. Additional refunds were permitted with a supervisor's approval.¹⁴ Payne, ¶ 26.

Further, when a customer called customer service to cancel a membership in one program but did not mention other programs that had been purchased in the same transaction, the customer service agent would often affirmatively remind the caller of those other memberships. Payne, ¶ 27. Notes of customer service calls verify this practice. (*See, e.g.*, Feb. 4, 2010 Call Notes at Ex. 41 ("Client called and wanted to cancel SMM [search market member]. He stated that he was told he paid up til the 10th of February. I tried to resell but he wasn't interested. *I then explained about the grant program and NA [network agenda upsells]*. HE wanted to cancel those as well. Canceled Grant program, SMM and NA. Customer was sat."); ("Client wants to cancel With Acai / . . . Let cust know i can cancel To avoid Future charges/ Cust Agreed/ *Let her know of FF and CS [upsells]* / went to resell when cust stated she is not interested and wants all Programs canceled/ *Canceled Acai FF and Cs*").)

F. Further Efforts at Clear and Conspicuous Disclosures.

To ensure that consumers always understood the source of charges on their credit card and bank statements, iWorks developed a Descriptor URL tool. iWorks undertook this initiative when it discovered that financial institutions would intermittently fail to include iWorks's customer service number in the statement descriptors. iWorks therefore arranged for the descriptors to be in the form of a URL that, when inputted in a search function, yielded a page with full information, including iWorks's customer service number. This made it as easy as possible for consumers to obtain instant information regarding the source of the charge. Payne, ¶ 28.

In addition, iWorks voluntarily implemented a costly procedure to ensure that all consumers who purchased CDs actually received them. iWorks paid an extra 40 cents on return service for every CD that was sent out for delivery. If a CD could not be delivered, it would be returned to iWorks, and Customer Service would then call the customer to confirm or correct the address and

¹⁴ As a result of the company's generous refund policy and carefully trained customer service representatives, consumers who contacted iWorks' customer service with questions often commended the company on the courtesy and care with which their concerns were resolved. *See, e.g.*, Ex. 39 ("I know you folks process complaints and feedback all day every day, so again I would like to reiterate how appreciative I am for your assistance in this matter, with results surpassing what I had anticipated."); Ex. 40 ("I can not thank you enough for the way you have handled this . . . I am sincerely grateful for your help.")

1 resend it. If iWorks could not reach the customer, it would proactively cancel the order and all
 2 charges. In doing so, iWorks absorbed the shipping and handling charges and abandoned all
 3 prospective revenue relating to those sales. In all, this procedure cost iWorks almost \$3 million.
 4 Payne, ¶ 29.

5 Finally, over and above these efforts, iWorks proactively canceled almost 80,000 orders
 6 before any consumers were billed because the orders may have come through landing and order
 7 pages that iWorks deemed unacceptable. iWorks did so even though it had already paid the cost-per-
 8 acquisition fee to its brokers for these orders. Payne, ¶ 30.

9 **V. IWORKE DILIGENTLY POLICED THE ADVERTISEMENTS OF THE BROKERS**
 10 **AND AFFILIATES.**

11 iWorks diligently monitored and policed the advertisements published by the brokers and
 12 affiliates who were marketing iWorks' products, spending significant resources to make sure the
 13 advertisements designed and published by the brokers and affiliates were not deceptive.

14 **A. Demand Letters.**

15 iWorks, acting through one or more of the individual Defendants, sent many demand letters
 16 specifically instructed brokers *not* to make many of the claims at the heart of the Commission's case.
 17 When iWorks discovered pages containing claims that consumers were likely to receive grant money
 18 or to get federal grants for personal expenses, it demanded that they be removed. (*See, e.g.*, iWorks
 19 Site Compliance Report dated 6/17/2009 at Ex. 36 ("Replace 'Find the Grant that's right for you'
 20 with 'Find the Grant that 'may' be right for you.'"); *id.* ("Remove 'Receive your FREE MONEY!!!'
 21 with 'Apply For a Grant Today!!!' or something like that."); *id.* at p. 4 ("The only thing standing in
 22 your way from receiving some of this money is Learning the process!' This is incorrect, it takes
 23 doing, not just learning, and one must qualify as well."); H. Johnston (iWorks) email to E.
 24 Mortensen (Virgin Offers), Jan. 4, 2010 at Ex. 42 (demanding numerous corrections to Virgin Offers
 25 sites, including, "Not all American citizens are eligible to receive grants"); *id.* ("One cannot pay off
 26 personal debt and expenses and will unlikely be funded for home repair with Federal Grants so do not
 27 make such claims."); *id.* ("Do not state that one 'may be eligible to receive \$50,000 in government
 28 money . . ."). iWorks similarly policed claims about the amount of income consumers could expect

1 to make from its Income Generation Program, and demanded such claims be removed, qualified, or
2 substantiated. (*See, e.g.*, Pixel Report comments to Brokers at Ex. 43 (comment dated July 30, 2009,
3 “Remove any earning dollar figures.”); *see id.* (“be very cautious of any dollar figures on potential
4 earnings”); *id.* at Ex. 44 (“Is this an accurate statement; we need documentation”); *see also* Ryan
5 Riddle email to Justin Lund and Bryce Payne, June 5, 2009 at Ex. 45 (noting “Your [*sic*] One Click
6 Away from Making Up to \$943 A Day”” should be changed to “Your [*sic*] One Click Away from
7 *Learning How to Make Up to . . .*”) (emphasis added).)

8 **B. Pixel Tracking.**

9 In 2008, at considerable expense, iWorks designed and implemented a Pixel reporting tool to
10 track the landing and order pages through which sales were being generated. Through this tool,
11 iWorks could promptly identify pages published by its brokers and third-party affiliates that were
12 generating sales but were not in accord with iWorks’s rigorous compliance standards. iWorks
13 required its brokers and third-party advertisers to place a JavaScript tracking pixel on their landing
14 and order pages. When a customer placed an order through the website, the corresponding URL was
15 automatically forwarded to iWorks. iWorks employees then accessed the URLs and reviewed the
16 landing and order pages to assess compliance with iWorks’s guidelines. Reviewers would note
17 specific representations that appeared on the landing and order pages, highlight potentially
18 problematic language, and note when material information was omitted, such as pricing and
19 disclosures. The reviewers also suggested alternative verbiage that more accurately described the
20 product and offer terms. Items of concern were sent to the brokers and third-party advertisers the
21 same day. In addition, the reviews were compiled in a bi-weekly report that was sent to the brokers
22 and third-party advertisers. Payne, ¶ 37; (*see, e.g.*, D. Partridge (iWorks) email to Justin Lund
23 (Virgin Offers), dated Mar. 26, 2009 at Ex. 46).

24 **C. iWorks’ Compliance Guidelines.**

25 iWorks also incorporated relevant instructions into its Negative Option Marketing and
26 Upsells compliance guide, which it distributed to all iWorks marketing partners and within iWorks’s
27 own compliance personnel. It updated these guidelines to reflect developments in FTC positions,
28 including enforcement actions that the FTC brought against other companies. Payne, ¶ 38; (*see*

Negative Option Marketing and Upsells Guidelines at Ex. 47 (noting FTC’s position in recent litigation that “Consumers are not eligible to receive free money from the federal government for personal expenses and debts”); *id.* (“Avoid language, such as, ‘Did you know that you are eligible to receive FREE MONEY from the government?’”); *id.* at p.5 (“Avoid using dollar figures for earnings by ‘just filling out forms and doing searches on Google and Yahoo.’”); *id.* (noting FTC position that “Representation, expressly or by implication, that consumers who order the program are likely to earn substantial income is false and constitutes a deceptive act”).)

D. Pre-Emptive Cancellations.

Upon discovering that a sale had been made in connection with a potentially objectionable broker/affiliate advertisement, iWorks had a practice of pre-emptively cancelling the transaction and refunding the customer the purchase price. iWorks so cancelled and refunded 79,515 transactions, representing approximately \$1.3 million. Payne, ¶ 30.

E. Broker Terminations.

In 2009, iWorks terminated a key broker, Cathexis, who was not sufficiently diligent in correcting landing and order pages that iWorks found unacceptable. By terminating this relationship, iWorks lost an entire affiliate network that accounted for almost 9,000 sales per month. Payne, ¶ 44.

VI. IWOKS IS NOT LIABLE FOR ACTS OF THE BROKERS AND AFFILIATES.

Although a principal generally is bound by the acts of its agent, or salesperson, if those acts are within the reasonable scope of the agent’s apparent or actual authority, *Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431 (9th Cir. 1986), a principal is not likewise automatically liable for the acts of its independent contractors. Rather, courts properly decline to hold the principal responsible for the unauthorized, uncontrolled acts of its independent contractors, and especially for its “even more remote subcontractors.” *People v. Direct Revenue, LLC*, Index No. 401325/06 (N.Y. Sup. Ct., May 20, 2008).

In *People v. Direct Revenue, LLC*, for example, the court dismissed the People’s claims against Direct Revenue for deceptive practices relating to the installation of pop-up advertising software on consumers’ computers, where those pop-up advertisements occurred through websites created and/or operated by third parties. Direct Revenue, a producer of software that generated pop-

up ads geared to a particular consumer's Internet usage, contracted with third party distributors for those pop-ups, who then in turn arranged for subcontractors to disseminate the ads. The court found these distributors to be "independent contractors" and reasoned that a "principal is generally not liable for the acts of an independent contractor because of the lack of control over how the contractor's work is performed." Slip. Op. at 9 (citing *Chainani v. Bd. of Educ.*, 87 N.Y.2d 370, 380-81 (1995)). It further stated that "[n]either may the principal be charged with the conduct of even more remote subcontractors." *Id.* Direct Revenue was "not authorized or obligated to control" the work of the third parties, "particularly since many of them additionally acted as distributors for various other contractors." *Id.* at 9-10. And even though the pop-up ads were all initially generated by Direct Revenue, "mere participation in the installation [of the software] is insufficient [to establish liability], absent proof of involvement in the original deceptive conduct which induced the installation." *Id.*

Moreover, the court concluded that "allegations that [Direct Revenue] had general and/or constructive knowledge of some distributors' wrongful practices are insufficient to impose liability." *Id.* (citing *Del Signore v. Pyramid Sec. Servs., Inc.*, 147 A.D.2d 759, 760-61 (1989) and *Hamilton v. Beretta USA Corp.*, 96 N.Y.2d 222, 237 (2001)). The court recognized Direct Revenue's efforts to remedy problems caused by its contractors and subcontractors, appreciating that "in those few instances in which [Direct Revenue] obtained actual knowledge of a distributor's misconduct, it took significant steps to modify its procedures." Ultimately, simply because Direct Revenue "may have benefited financially from its relationship with the distributors before remedial measures were implemented," *id.* at 11, it could not be held liable for the deceptive conduct of its third party contractors and subcontractors.

The circumstances here are much more akin to those present in the Direct Revenue case than in other FTC cases holding principals responsible for the advertising efforts of their affiliates. This is not simply another "traveling salesmen" case. iWorks did not send out into interstate commerce selected representatives, whose sales activities it directed and controlled, for the exclusive purpose of reaching consumers. *Cf. International Art Co. v. FTC*, 109 F.2d 393 (7th Cir. 1940) (company liable for deceptive acts of traveling salesmen, who were solely responsible for dealing with the public in

soliciting business); *Parke, Austin & Lipscomb, Inc. v. FTC*, 142 F.2d 437 (2d Cir. 1944) (same); and *Goodman v. FTC*, 244 F.2d 584 (9th Cir. 1957) (same). Indeed, since iWorks did not even know the identity of the individual affiliates, they certainly cannot be deemed to be under iWorks's direction or control.

This case is also distinguishable from *Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431 (9th Cir. 1986). There, defendant Southwest Sunsites was held responsible for its real estate agent Porter Realty's misrepresentations to consumers on the basis of extensive contact between them. 785 F.2d at 1438-39. Southwest Sunsites provided telephone scripts and sales materials for public distribution to Porter Realty, and Porter Realty had actual authority through its Agents Agreement with Southwest Sunsites to make investment-related representations to consumers that did not conflict with the written material provided by Southwest Sunsites. *Id.* In addition, Porter Realty and Southwest Sunsites held almost daily telephone conferences to discuss business and sales, a fact which refuted Southwest Sunsites' argument that it was unaware of Porter Realty's misleading representations. *Id.*

Here, because iWorks did not "actively encourage[] and participate[]" in the making of false and misleading representations by its subcontractors to consumers, *see Consumer Sales Corp. v. FTC*, 198 F.2d 404 (2d Cir. 1952), it should not be held responsible for the unauthorized acts of rogue affiliates. "Guilt by association is not the applicable legal standard." *See FTC v. Gemtronics*, FTC Docket No. 9330 (Sept. 2008) (refusing to hold dietary supplement distributor liable for website misrepresentations of manufacturer, because "[n]either unsupported assertions of general 'participation' in the website . . . nor a business relationship" with the manufacturer substitutes "for proof of participation in creating or disseminating" challenged ads); *see also In re Dobbs Truss Co.*, No. 5808, 48 F.T.C. 1090, 1952 FTC LEXIS 49, at *50-51, *76-*77 (Apr. 3, 1952) (refusing to hold manufacturer liable for advertisements of its distributors, despite presence of formal franchise agreement, because manufacturer did not exercise control over the challenged ads).

Likewise, the individual Defendants cannot be held liable for the acts of iWorks, since they did not participate directly in the deceptive acts at issue or possess authority to control those acts. *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009). Indeed, the individual Defendants' most direct

1 participation in the allegedly deceptive ads was to contact the responsible broker or affiliate and
2 demand that the applicable website, landing or order page be fixed to come into compliance with the
3 guidelines established by the individual Defendants.

4 Furthermore, the diligent actions that iWorks took, through one or more of the individual
5 Defendants, to police the representations being made by brokers, publishers and affiliates soundly
6 disproves the existence of the element of knowledge, reckless indifference or awareness required to
7 hold an individual liable for monetary redress of consumer injury. *Stefanchik*, 559 F.3d at 931.

8 **VII. IWORKS DID NOT ATTEMPT TO “EVADE DETECTION”**

9 The Commission contends that iWorks attempted to “evade detection” by setting up shell
10 companies, flooding the Internet with positive reviews, and threatening to blacklist consumers. Mot.
11 at 22:10-17. The Commission misconstrues and misunderstands iWorks’ efforts to combat the
12 effects of affiliate fraud and educate consumers about the consequences of improper chargebacks.

13 **A. The Proliferation of Chargebacks in 2009**

14 In 2009, card companies tightened their chargeback limits. At the same time, iWorks’ sales
15 volume was dropping. Because chargeback rates compare the number of chargebacks in a given
16 month against the number of sales in that month—rather than against the month in which the relevant
17 sales occurred—a company with declining sales volume is especially vulnerable to chargeback limits.
18 Furthermore, the card companies continued to liberalize their chargeback practices, which in turn
19 made it easier for unscrupulous affiliates—and sometimes, unscrupulous customers—to exploit the
20 chargeback process at the merchant’s expense. Payne, ¶ 31.

21 iWorks found itself subject to an increasing number of bad faith chargebacks due, in part, to
22 the escalation of affiliate fraud. Some affiliates posted sales information from other customer data
23 that had been acquired from other sources. Other affiliates paid people to order iWorks’ products and
24 then initiate a chargeback. In either of these circumstances the affiliates received their per-sale
25 commission even though a chargeback was almost certain to result, and iWorks lost money. Even
26 worse, affiliate fraud resulted in an artificially high chargeback rate that caused card companies to
27 impose penalties on iWorks. Throughout 2009, approximately 60% of iWorks’ chargebacks were
28 attributable to affiliate fraud. Payne, ¶ 32.

1 In addition to affiliate fraud, what became known as “friendly” fraud resulted from the credit
 2 card companies simplifying and liberalizing the chargeback process. Whereas consumers formerly
 3 had to go into the bank to request a chargeback, they could now view their statement on line and
 4 merely click “dispute charge” in order for the charge to be reversed. Payne, ¶ 33. The *Wall Street*
 5 *Journal* reported that major online companies were seeing a 50% increase in their chargebacks, much
 6 of it attributed to friendly fraud. (Ex. 48).

7 As a result of this fraud against iWorks, the number of bad faith chargebacks was
 8 proliferating. In response to this threat, iWorks took the steps described below to attempt to combat
 9 the effects of affiliate fraud and educate consumers about the consequences of improper chargebacks.

10 Tellingly, two of the processing companies that did significant amounts of business with
 11 iWorks, CardFlex and PowerPay, acknowledged the reality of these affiliate fraud issues in 2009 and
 12 complimented iWorks on how they were handling the situation:

13 As it relates to a merchant/processor relationship, I would classify
 14 the one that we experienced with iWorks as stellar. They are an
 15 exemplary company, and one that PowerPay would not hesitate to
 16 do business with again in the future. They acted the way that every
 17 processor would dream of their merchants acting if they found
 18 themselves in a similarly difficult situation.

19 (Ex. 49).

18 **B. The Creation of Related Companies**

19 In 2009, iWorks created a number of corporations—many of which have been named as
 20 Corporate Defendants in this action—and opened merchant accounts for them.¹⁵ The purpose was
 21 not to deceive banks, customers, the FTC, or anyone else. Rather, the purpose was to track and
 22 possibly isolate instances of fraudulent chargebacks. More specifically, the purpose was to confine
 23 excessive chargebacks that were consistent with affiliate or friendly fraud to particular merchant
 24 accounts, and thus avoid tainting chargeback rates for accounts that appeared to involve primarily
 25 legitimate consumer activity. iWorks undertook this strategy at the suggestion of an ISO that it had
 26 been working with. With this strategy, as iWorks brought in a new client, it would create a new
 27 company to run the processing for that client’s business so as to avoid the possibility of the new
 28

¹⁵ 35 of the 61 corporations never actually functioned. Payne, ¶ 33A.

1 client's processing being adversely affected by affiliate fraud chargeback issues in other accounts.
2 Payne, ¶ 34.

3 The creation of additional merchant accounts through these other companies—which the
4 Commission pejoratively characterizes as “shell companies”—was perfectly legal, and there is no
5 evidence whatsoever that any consumers were misled or otherwise harmed by this practice. Nor was
6 there any harm to the processing companies that held the accounts or to the card companies. The
7 processing companies that held the accounts were fully aware that they were related to activity by
8 iWorks and Jeremy Johnson. In fact, the processing companies asked Mr. Johnson to submit a
9 personal guaranty for the various accounts, and Mr. Johnson obliged. Johnson, ¶ 2; (*see* Personal
10 Guaranty Examples at Ex. 50).

11 In any event, most of these accounts were not opened until late in 2009 or early 2010, soon
12 before iWorks halted its sales operations. Thus, even if this practice resulted in any harm to
13 consumers—which it did not—it could only have affected consumers who purchased iWorks
14 programs after those accounts were opened.

15 **C. The Alleged Threats to Consumers**

16 iWorks created BadCustomer not to threaten customers, but as a means of screening potential
17 customers to detect chargeback risks, to educate consumers about the consequences of chargebacks,
18 and to encourage dissatisfied customers to contact customer service representatives directly before
19 initiating chargebacks through their banks. The idea arose out of a discussion Jeremy Johnson had
20 with Martin Ellipt of Visa, who said it was the merchant's responsibility to motivate consumers to
21 contact the company before initiating a chargeback. Johnson, ¶ 3.

22 Businesses that use BadCustomer.com configure filters to determine the parameters according
23 to which sales will be flagged. When the business receives payment information for a potential sale,
24 the BadCustomer database screens the information to determine whether the customer poses an
25 unacceptable chargeback risk. If so, then the merchant is presented with the choice to accept or
26 decline the sale. If the sale is declined, then the customer is directed to the GateKeeper system.
27 There, the consumer has the option of signing a “No Future Chargebacks” Agreement or cancelling
28

the sale. Restricted customers who sign the agreement are permitted to complete their transactions. Johnson, ¶ 4.

The program was intended to minimize the likelihood of chargebacks and the attendant penalties levied by credit card companies against the merchant. At the time BadCustomer was created, friendly fraud was rampant in all businesses. iWorks's records demonstrate, not only that many consumers who requested chargebacks were not giving iWorks the opportunity to resolve their problems first, but also the magnitude of improper chargeback use:

- 93,629 customers purchased an iWorks program, requested a chargeback or refund, and then returned to purchase again.
- 76,810 customers received a full refund from iWorks but also posted a chargeback, resulting in a "double refund."
- 28,216 customers who previously posted a chargeback or received a refund circumvented iWorks's fraud filter¹⁶ and were able to purchase again.
- Of those 28,216 customers, 8,954 then requested a refund, including 1,033 chargebacks.

Johnson, ¶ 5.

Thus, as part of its product fulfillment, iWorks provided customers with information regarding the BadCustomer.com website. These notices were not intended to threaten customers or deprive them of proper recourse, but to encourage them to contact iWorks in the first instance so iWorks could remedy consumer concerns directly. Johnson, ¶ 6.¹⁷ In any event, it is not plausible that notices regarding BadCustomer, which accompanied purchases of iWorks programs, would deter bona fide consumers from lodging bona fide disputes of what they believed were unauthorized credit card charges.

VIII. IWORKS DID NOT VIOLATE EFTA AND REGULATION E

The Commission alleges that iWorks violated Section 1693e(a) of the Electronic Funds Transfer Act ("EFTA") and Regulation E. This allegation is without merit.

¹⁶ iWorks used a variety of measures to protect itself from fraudulent or mistaken purchases, many of which also protected consumers who had entered into purchases by mistake. Examples included a tool to detect if a consumer was repurchasing a program she had already bought, a tool to detect if a consumer had purchased any other iWorks program in the same 24-hour period, and tools to keep track of prior cancellations, chargebacks and refunds. Payne, ¶ 35.

¹⁷ BadCustomer has been used by many merchants in addition to iWorks.

1 Section 1693e(a) states in relevant part: “A preauthorized electronic fund transfer from a
2 consumer’s account may be authorized by the consumer only in writing, and a copy of such
3 authorization shall be provided to the consumer when made.” 15 U.S.C. § 1693e(a). To establish
4 liability under Section 1693e(a), the FTC must prove that iWorks did not obtain consumers’ written
5 authorization to make recurring charges to their bank accounts or provide them with a copy of the
6 authorization.

7 According to 12 C.F.R. Section 205.10(b), “Preauthorized electronic fund transfers from a
8 consumer’s account may be authorized only by a writing signed or similarly authenticated by the
9 consumer.” The Federal Reserve Board’s Official Staff Interpretation explains that “[t]he similarly
10 authenticated standard permits signed, written authorizations to be provided electronically. The
11 writing and signature requirements of this section are satisfied by complying with the Electronic
12 Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq.*” 12 C.F.R.,
13 Supplement I to Part 205, § 10(b)(5).

14 These requirements were met. The order page—the same page through which consumers
15 authorized their purchases—disclosed the amount of the recurring charges, when the charges would
16 begin, how often the charges would be made, the account to which the charges would be charged or
17 debited, and that the membership (and thus the charges) could be terminated at any time. Over time,
18 more explicit disclosures were added, explaining that, by entering the information and proceeding
19 with the purchase, the customer was providing her electronic signature. Thus, many of the iWorks
20 order pages carry such express language. (*see* Grant Program order page at Ex. 90 (“Once submitted,
21 this electronic order constitutes an electronic letter of agency. NetPro Marketing’s reliance on your
22 electronic signature, as obtained above, is done pursuant to the Uniform Electronic Transactions Act
23 and the electronic Signatures in Global and National Transactions Act.”).)

24 In addition, the recurring charges were explained in the expanded Terms and Conditions.
25 Typically, after listing the recurring charges, the Terms and Conditions would explain that, by
26 submitting the order, the consumer was making the following representation: “I authorize you to
27 debit my checking or credit/debit card account that was used to order the CD to pay for these
28 membership programs and my account will be debited/charged monthly as applicable.” (*See* JRS

Media Terms & Conditions at Ex. 30). Many of the order pages required the consumer to check a box confirming that the consumer had read and agreed to the Terms and Conditions. In some instances, the landing page contained a check box confirming agreement to the Terms and Conditions as a necessary step before even proceeding to the order page.) Regardless of whether the landing or order page contained a check box, the order page clearly explained that, by clicking the button to submit her order, the consumer was representing that she had read and was agreeing to the Terms and Conditions.

Finally, customers could print the order page that contained the authorization. And, immediately after the purchase, customers were transferred to a webpage that reiterated these terms. Customers also received e-mails explaining the charges. Payne, ¶ 36.

These procedures satisfy the requirement of written authorization for recurring charges under Section 1693e(a). Thus, there is no basis for any relief under the EFTA. And even if there were a technical violation of the EFTA, the Commission could not recover civil penalties. The FTC may only seek civil penalties in four types of cases: (i) knowing violations of FTC rules, (ii) violations of certain statutes (Fair Credit Reporting Act or Fair Debt Collection Practices Act), (iii) violations of a prior order against the defendant, and (iv) knowing violations of prior commission findings that a specific practice is unfair or deceptive. *See* 15 U.S.C. Section 45(m)(1)(A), (l, and 45(m)(1)(B). None of those circumstances exists here.

Further, it is worth noting that the EFTA itself does not provide for restitution—only damages. *See Friedman v. 24 Hour Fitness USA, Inc.*, 580 F. Supp. 2d 985, 998-99 (2008) (there is “no EFTA provision or other authority supporting a restitution remedy”). Although cases decided under the EFTA shed little light on the precise nature of actual damages, it is clear that they must be something other than what customers paid for the product or service they purchased. The EFTA is not an all-purpose consumer protection statute; rather, it addresses a limited range of transactions involving the electronic transfer of funds, such as overdraft charges, interest charges, banking fees, and similar penalties that might not have been incurred had the customer used a credit card instead of a debit card. But whether such damages exist would require a mini-trial for every debit card purchaser who did not cancel during the free trial period.

Further, whether any damages were caused by the alleged EFTA violation is also unique to each customer. Section 1693m(a)(1) provides that recovery of actual damages requires proof that the damages were sustained “as a result of” the alleged violation. The weight of judicial authority holds that this language in Section 1693m(a)(1) requires proof of detrimental reliance. *See, e.g., Burns v. First Am. Bank*, No. 04-7682, 2006 WL 3754820, *6 (N.D. Ill. 2006) (distinguishing statutory and actual damages under EFTA, and noting that statutory damages do not require showing of reliance); *Voeks v. Pilot Travel Centers*, 560 F. Supp. 2d 718, 725 (E.D. Wis. 2008) (detrimental reliance necessary for actual damages); *Brown v. Bank of America, N.A.*, 457 F. Supp. 2d 82, 90 (D. Mass. 2006) (same).¹⁸ Thus, regardless of whether damages even exist, there is no means of determining on a customer-wide basis that they were caused by the alleged violation.

IX. INDIVIDUAL DEFENDANTS ARE NOT PERSONALLY LIABLE

An individual may be liable for corporate violations of the FTC Act if that individual participated directly in the deceptive acts at issue or possessed authority to control those acts. *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (citing *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1202 (9th Cir. 2006)).

But to hold an individual liable for monetary redress of consumer injury, the Commission must satisfy an additional requirement: it must prove that the individual had knowledge of the misrepresentation at issue, was recklessly indifferent to the truth or falsity of the misrepresentation, or was aware of a high probability of fraud along with an intentional avoidance of the truth. *Stefanchik*, 559 F.3d at 931. The Commission cannot make that showing here as to any of the individual Defendants.

iWorks did not host on its servers the websites for the Grant Program, the Income Generation Program, or the other programs it sold. Nor did iWorks, for the most part, create the landing and order pages used in connection with its programs. That work was done by brokers, publishers and

¹⁸ Identical language can be found in the EFTA’s sister statute, the Truth in Lending Act (“TILA”). *Compare* 15 U.S.C. § 1640 *with* 15 U.S.C. § 1693m(a). As with the EFTA, a plaintiff seeking actual damages for failure to comply with TILA must prove that such damages were sustained “as a result of the failure.” This, in turn, requires proof of detrimental reliance. *See In re Ferrell (McDonald v. Checks-N-Advance, Inc.)*, 539 F.3d 1186, 1192 (9th Cir. 2008). Because the two statutes are closely analogous and contain the same language governing actual damages, the statutory language should be interpreted in the same manner. *See Burns*, 2006 WL 3754820 *2, n. 1 (TILA case law “persuasive” in interpreting EFTA); *Voeks*, 560 F. Supp. 2d at 722-23 (“cases that hold the TILA to be a useful analogy in analyzing the EFTA are correct”).

1 affiliates, who were independent contractors, and whose actions were not within iWorks' control and
2 cannot be attributed to iWorks or to the individual Defendants. Payne, ¶ 45.

3 The diligent actions that iWorks took, through one or more of the individual Defendants, to
4 police the representations being made by brokers, publishers and affiliates soundly disproves the
5 existence of the participation or knowledge required by law to hold an individual liable for corporate
6 violations of the FTC Act.

7 **A. Level of Participation of Individual Defendants**

8 **1. Duane Fielding**

9 Duane Fielding was involved with a program known as Network Agenda, which was offered
10 as an upsell with some of the iWorks core programs. The Commission has not alleged that any
11 disclosures regarding the terms and benefits of Network Agenda were misleading or deceptive. The
12 Commission merely claims that the existence of the upsells themselves was not adequately disclosed
13 on the order pages, which, as discussed above, is contrary to all available evidence.

14 The Commission also claims that Mr. Fielding was aware of consumer complaints regarding
15 Network Agenda and that merchant accounts associated with that program sometimes exceeded card
16 company chargeback limits. Without more, such allegations, even if true, would not justify any relief
17 whatsoever under the FTC Act, let alone draconian measures such as a lifetime ban and joint and
18 several liability for all of the relief the Commission is seeking against iWorks and Jeremy Johnson.
19 That a small percentage of consumers who enrolled in Network Agenda may have complained about
20 their enrollments certainly does not prove that there were any misrepresentations regarding the
21 program or that Mr. Fielding was aware of or approved of any misrepresentations.

22 Nor is there any evidence that Mr. Fielding, who was not employed by iWorks, had any
23 control over the business activities of iWorks. The Commission alleges that Network Agenda
24 received funds associated with sales by iWorks, but given that Network Agenda's program was sold
25 as an upsell with iWorks's programs, it is hardly remarkable that a portion of funds associated with
26 the sale of iWorks programs would be apportioned to Network Agenda. *See* Declaration of Duane
27 Fielding.

28 //

1 **2. Andy Johnson**

2 Andy Johnson, Jeremy Johnson's brother, provided daily updated content for an upsell
3 product known as Rebate Millionaire. As with Network Agenda, the Commission has not identified
4 any false claims in relation to Rebate Millionaire in any order pages that were actually presented to
5 consumers—the Commission merely objects to the fact of the upsells.

6 The Commission also alleges that Andy Johnson was the titular owner of certain companies
7 that applied for merchant accounts in relation to programs marketed by iWorks. As described above,
8 the opening of these merchant accounts was legal and did not result in any harm to consumers. The
9 Commission further alleges that Andy Johnson was aware of an allegedly high number of consumer
10 complaints and chargebacks relating to products marketed by iWorks. But the Commission does not
11 allege that Andy Johnson exercised any control over any programs other than Rebate Millionaire, nor
12 is there any evidence that Rebate Millionaire itself was subject of voluminous consumer complaints.
13 *See Declaration of Andy Johnson.*

14 **3. Lloyd Johnston**

15 Lloyd Johnston oversaw merchant accounts. As discussed above, the opening and operation
16 of multiple merchant accounts was legal and did not result in any harm to consumers. That Mr.
17 Johnston helped open additional merchant accounts upon the ISO's advice as a means of protecting
18 the companies from affiliate fraud should not expose Mr. Johnston to any of the draconian relief that
19 the Commission is currently proposing.

20 The Commission also alleges that Mr. Johnston was aware of an allegedly high number of
21 consumer complaints and chargebacks relating to products marketed by iWorks. However, the
22 Commission does not allege—nor could it—that Mr. Johnston exercised any control over the
23 marketing and sales of any of these programs. *See Declaration of Lloyd Johnston.*

24 **4. Bryce Payne**

25 Bryce Payne worked at iWorks and became its General Manager in November 2009. Mr.
26 Payne was also involved in iWorks's marketing efforts, and in that regard had the authority to
27 approve web pages for publication through iWorks's brokers and their affiliates. As described above,
28 iWorks would not approve web pages that violated iWorks's compliance guidelines, and there is no

1 evidence that the web pages that the Commission has primarily focused on were used for any active
2 sales initiatives or that, if any similar pages were published to consumers, they were published with
3 iWorks's approval. The totality of this evidence confirms that Mr. Payne did his best to attempt to
4 ensure that consumers were presented with marketing and sales materials that were consistent with
5 FTC guidelines.

6 The Commission repeats its boilerplate allegation that a company affiliated with Mr. Payne
7 opened a merchant account and that Mr. Payne was aware of an allegedly high number of consumer
8 complaints and chargebacks relating to products marketed by iWorks. The opening of the merchant
9 account is not a basis for any relief as to Mr. Payne, for reasons described above regarding the other
10 individuals. As to Mr. Payne's alleged knowledge of consumer complaints and chargebacks, all of
11 the evidence suggests that Mr. Payne did his best to ensure that consumers were presented with clear
12 and accurate disclosures, in an effort to eliminate any possible basis for consumer dissatisfaction.
13 That a small percentage of consumers who enrolled in iWorks programs may have complained about
14 their enrollments certainly does not prove that there were any misrepresentations regarding the
15 program or that Mr. Payne was aware of or approved of any misrepresentations. To the contrary, the
16 evidence shows that Mr. Payne made consistent efforts to ensure that there were never misleading
17 statements of any kind in the marketing and sales materials.

18 **5. Ryan Riddle**

19 Ryan Riddle was the General Manager of iWorks until November 2009. Mr. Riddle no
20 longer has any affiliation with iWorks. Like Mr. Payne, Mr. Riddle was involved in iWorks's
21 marketing efforts, and in that regard had the authority to approve web pages for publication through
22 iWorks's brokers and their affiliates. As described above, iWorks would not approve web pages that
23 did not satisfy iWorks's compliance guidelines, and there is no evidence that the web pages that the
24 Commission has primarily focused on were used for any active sales initiatives or that, if any similar
25 pages were published to consumers, they were published with iWorks's approval. The totality of this
26 evidence confirms that Mr. Riddle did his best to attempt to ensure that consumers were presented
27 with marketing and sales materials that were consistent with FTC guidelines.
28

1 The Commission repeats its boilerplate allegation that a company affiliated with Mr. Riddle
2 opened a merchant account, and that Mr. Riddle was aware of an allegedly high number of consumer
3 complaints and chargebacks relating to products marketed by iWorks. The opening of the merchant
4 account is not a basis for any relief as to Mr. Riddle, for reasons described above regarding the other
5 individuals.

6 As to Mr. Riddle's alleged knowledge of consumer complaints and chargebacks, all of the
7 evidence suggests that Mr. Riddle did his best to ensure that consumers were presented with clear and
8 accurate disclosures, in an effort to eliminate any possible basis for consumer dissatisfaction. That a
9 small percentage of consumers who enrolled in iWorks programs may have complained about their
10 enrollments certainly does not prove that there were any misrepresentations regarding the program or
11 that Mr. Riddle was aware of or approved of any misrepresentations. To the contrary, the evidence
12 shows that Mr. Riddle made consistent efforts to ensure that there were never misleading statements
13 of any kind in the marketing and sales materials, including the development and implementation of
14 the Pixel reporting tool. *See* Declaration of Ryan Riddle.

15 **6. Scott Muir, Kevin Pilon and Terrason Spinks**

16 The Commission seeks slightly less draconian relief against Scott Muir, Kevin Pilon and
17 Terrason Spinks, but nonetheless seeks to hold them liable for the full extent of the financial relief
18 sought by the Commission. We believe the evidence fails to warrant any relief at all against these
19 individuals and their affiliated companies.

20 Scott Muir was a non-managerial iWorks employee who is now employed by BadCustomer.
21 The Commission claims that Mr. Muir was the titular owner of certain companies that opened
22 merchant accounts relating to the programs marketed by iWorks, and that he was aware of consumer
23 complaints regarding these programs. For reasons described above, this does not warrant any relief
24 against Mr. Muir or the companies with which he is affiliated.

25 Kevin Pilon, like Loyd Johnston, was involved in merchant processing and, according to the
26 proposed Complaint, was the titular owner of certain companies that applied for merchant accounts in
27 relation to programs marketed by iWorks. Again, the opening of these merchant accounts was legal
28 and did not result in any harm to consumers, and Mr. Pilon's alleged knowledge of consumer

1 complaints, without more, does not warrant any relief against Mr. Pilon or the companies with which
2 he is affiliated.

3 Terrason Spinks did not work at iWorks. He is the alleged titular owner of one company that
4 opened merchant accounts and allegedly received reports from iWorks about customer complaints
5 and chargebacks. Without more, there is no basis for relief as to Mr. Spinks. *See* Declarations of
6 Scott Muir, Kevin Pilon and Terrason Spinks.

7
8 /s/ Brett D. Ekins

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10 Attorneys for Temporary Receiver
11 **ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

12
13 **UNITED STATES DISTRICT COURT**

14
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, individually, as
officer of Defendants I Works, Inc.,
20 Cloud Nine, Inc., CPA Upsell, Inc.,
Elite Debit, Inc., Internet Economy,
21 Inc., Market Funding, Inc., and Success
Marketing, Inc.; as a member of
22 Defendant Network Agenda LLC; and
as the *de facto* principal of numerous
23 Defendant Shell Companies identified
below;

24 DUANE FIELDING, individually, as
an officer of Anthon Holdings, Inc., and
25 as a member of Defendant Network
Agenda LLC;

26 ANDY JOHNSON, individually, as a
27 manager of I Works, Inc., and as titular
principal of numerous Defendant Shell
28

Case No. 2:10-CV-02203-RLH-GWF

**REPORT OF TEMPORARY
RECEIVER'S ACTIVITIES
JANUARY 13, 2011 THROUGH
FEBRUARY 4, 2011**

1 Companies identified below;
2 LOYD JOHNSTON, individually, as a
3 manager of I Works, Inc., and as titular
principal of numerous Defendant Shell
Companies identified below;
4 SCOTT LEAVITT, individually, as a
5 manager of I Works, Inc., and as
principal of Defendant Employee Plus,
Inc.;
6 SCOTT MUIR, individually and as
7 titular principal of numerous Defendant
Shell Companies identified below;
8 BRYCE PAYNE, individually, as a
9 manager of I Works, Inc., and as titular
principal of Defendant JRB Media, Inc.,
a Shell Company;
10 KEVIN PILON, individually and as
11 titular principal of numerous Defendant
Shell Companies identified below;
12 RYAN RIDDLE, individually, as a
13 former manager of I Works, Inc., and as
titular principal of Defendant Diamond
J Media, Inc., a Shell Company;
14 TERRASON SPINKS, individually and
15 as principal of Defendant Jet
Processing, Inc., a Shell Company; and
16 I WORKS, INC., et al.,

17 Defendants.
18

19
20 Robb Evans of Robb Evans & Associates LLC, the Temporary Receiver
21 appointed pursuant to the Court's Order (Emergency Motion for Temporary
22 Restraining Order-#17; Motion to Appoint Receiver-#19) issued on January 13,
23 2011, hereby files the Report of Temporary Receiver's Activities for the period of
24 January 13, 2011 through February 4, 2011 attached hereto.

25 //

26 //

27 //

28 //

1 Dated: February 8, 2011

Respectfully submitted,

2
3 RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

4 MCKENNA LONG & ALDRIDGE LLP
5 GARY OWEN CARIS
6 LESLEY ANNE HAWES

7 By: /s/ Gary Owen Caris

8 Gary Owen Caris
9 Lesley Anne Hawes

10 Attorneys for Temporary Receiver
11 **ROBB EVANS OF ROBB EVANS &**
12 **ASSOCIATES LLC**

ROBB EVANS of ROBB EVANS & ASSOCIATES LLC
Temporary Receiver of
I Works, Inc., et al. and the Assets of Jeremy Johnson

REPORT OF TEMPORARY RECEIVER'S ACTIVITIES
JANUARY 13, 2011 THROUGH FEBRUARY 4, 2011

This report covers the activities of the Temporary Receiver¹ since the inception of the temporary receivership. This is the first Report to the Court on the progress of the temporary receivership. It does not constitute an audit of financial condition and is intended only to provide information for use by the Court in assessing the progress of the temporary receivership.

Overview

This report will discuss and provide details about the following:

- The known assets and liabilities of I Works, Inc. (I Works) and other companies owned or controlled by Jeremy Johnson.
- The known assets and liabilities of Jeremy Johnson.
- The income and expenses of I Works and other companies owned or controlled by Jeremy Johnson.
- Distributions and payments of approximately \$59 million to or for the benefit of Jeremy Johnson and his affiliates.
- Funds deposited in a Las Vegas casino and records of losses exceeding \$1.3 million.
- Transfer of commercial property in January 2011 with no evidence of financial consideration.
- A recorded deed of trust for \$6.5 million against two expensive homes with no evidence of financial consideration. The beneficiary of the deed is a company owned by a longtime friend of Jeremy Johnson.
- A spider web of financial transactions between I Works, Jeremy Johnson, his affiliates, family members, and friends.
- Transfer of assets from I Works and other companies owned or controlled by Jeremy Johnson to third parties.

¹ Reference to the Temporary Receiver in this report means the Temporary Receiver, the Temporary Receiver's deputies, his staff, and his counsel.

Custody, Control and Possession

On January 14, 2011 the Temporary Receiver traveled to the business premises of I Works at 249 E. Tabernacle Street in St. George, Utah. The Temporary Receiver determined that the two-story office building was largely deserted and initially located only one individual defendant at the premises. Later that day, other individual defendants returned to the premises, including Scott Leavitt. He described himself as the accountant for the Corporate Defendants. The Temporary Receiver determined that a brother of Scott Leavitt shared office facilities and was providing some accounting services for a number of the Receivership Defendants. However, the brother's main occupation was also providing independent tax services to unrelated third parties.

Scott Leavitt and his small staff agreed to cooperate with the Temporary Receiver and provide access to electronic and hard copy financial records and information. During a three-day inspection of the business premises, the Temporary Receiver obtained electronic copies of QuickBooks accounting data, which included the 61 Corporate Defendants listed in the Temporary Restraining Order issued by this Court. The Temporary Receiver also obtained electronic copies of bank statements and merchant account statements that reportedly had been previously delivered to the Federal Trade Commission.

The Temporary Receiver also reviewed and took possession of hard copies of several years of bank statements and merchant account statements along with available employee files. Scott Leavitt also turned over numerous hard copy documents and electronic files related to assets of the Corporate Defendants and Jeremy Johnson.

The Temporary Receiver interviewed and served the available individual defendants with the Temporary Restraining Order. On January 16, 2011 Jeremy Johnson returned to the premises, accepted service of the Temporary Restraining Order, and briefly discussed the status of some of his personal assets and investments held by Corporate Defendant entities. Jeremy Johnson confirmed the statements made by Scott Leavitt and other individual defendants that all operating entities ceased doing any business, and all employees were discharged in December 2010.

Financial Information

A review of the records confirmed that I Works was the primary entity and Jeremy Johnson was the mastermind for I Works' operations and those of the other companies. A significant number of entities and shell companies existed that were affiliated with I Works and which appear to have been primarily created for the purpose of merchant processing, including opening merchant processing accounts and bank accounts.

The Temporary Receiver discovered and obtained 105 QuickBooks accounting files of the Corporate Defendants and their affiliated entities from the Receivership Defendants' computer server (Tab 1). The Temporary Receiver also obtained a significant number of

the merchant account statements and bank account statements at the I Works' business premises (Tab 2). The Temporary Receiver is continuing to review and analyze the merchant statements and bank statements.

The QuickBooks accounting system data that has been analyzed so far has revealed a substantial number of financial transactions with affiliated companies and with the individual defendant, Jeremy Johnson. The analysis reveals that the affiliated companies, primarily I Works, generated sales revenue over several years of more than \$332.5 million, and operating profit before depreciation of \$50.6 million. Nearly \$50.4 million, or 99.6%, of the operating profit was paid to Jeremy Johnson or for his benefit or transferred to his affiliates. Payments and distributions to Jeremy Johnson and for his benefit from other controlled and affiliated companies raise the total to approximately \$59 million.

Several sections of this report present the detail of financial operations, distributions, and assets transferred to or held by various entities.

At this time, the Temporary Receiver does not have any financial statements prepared by or for Jeremy Johnson that schedule and describe his personal financial assets. The Temporary Receiver has located and identified assets in the name of Jeremy Johnson from accounting entries in the financial records of I Works and other companies owned or controlled by Jeremy Johnson. The Temporary Receiver has also identified assets from data searches and from other resources.

The details discussed further in this report reveal that Jeremy Johnson purchased or directed the purchase of 31 real estate properties. Although some apparent equity remains, many of the properties have declined in value from the book values or the original purchase prices. Some of the properties currently appear to be valued at or below the loan balances known to be owed against them. Additionally, Jeremy Johnson also purchased or directed the purchase of airplanes, helicopters, cars, sport vehicles, and two houseboats. Similarly, these assets also appear to have declined in value from the book values or the original purchase prices, although some apparent equity remains.

The 31 real properties are carried at book values or purchase prices totaling \$29,956,667. The current estimated values total \$17,168,693. Current known loan balances total \$14,585,129. The seven aircraft shown on the books are carried at book values totaling \$6,947,321. The current estimated values total \$6,200,680. Current known loan balances total \$4,075,086.

In summary, as the table below indicates, the real properties and aircraft are now estimated to be worth significantly less than the book values/purchase prices, and apparent equity is about \$4.7 million instead of the \$18.2 million net value.

	(A)	(B)	(C)
	Book Value/ Purchase Price	Loan Balance	Current Estimated Value
Real Estate Properties	\$ 29,956,666.90	\$ 14,585,129.98	\$ 17,168,693.00
Aircraft	6,947,321.87	4,075,086.61	6,200,680.14
Total Properties and Aircraft	<u>\$ 36,903,988.77</u>	<u>\$ 18,660,216.59</u>	<u>\$ 23,369,373.14</u>
Net Value (A-B)	\$ 18,243,772.18		
Apparent Equity (C-B)	\$ 4,709,156.55		

Jeremy Johnson and his Entities

I Works

I Works was incorporated in 2000. Jeremy Johnson is the sole owner of I Works. I Works marketed its products as both core products and as forced up-sells on its own website. I Works' income statements by year and a balance sheet as of January 12, 2011 are attached at Tab 3.

I Works' total revenue from its inception through January 12, 2011 was approximately \$332.5 million. The revenue increased significantly since 2006, and the revenue from January 1, 2006 to December 31, 2010 totaled about \$291 million. Based upon the review of the financial records and related documents, a substantial portion of the revenue was generated through the merchant accounts under the names of the affiliated entities and shell companies, recorded as income on the affiliates' books, and later transferred to I Works' and other affiliates' books.

On a test basis, the Temporary Receiver reviewed and traced the revenues recorded on the books of I Works to the selected affiliated entities and shell companies. The Temporary Receiver determined that the revenue recorded on I Works' books appeared to be the revenue net of the merchant fees and reserves (See Tab 4). Consequently, the revenue generated from the entire operations of I Works' enterprise is likely to be more than the revenue of \$332.5 million.

A total of \$139,645,467.49 was paid and recorded as lead costs on I Works' books. The Temporary Receiver has analyzed the accounting details and the following were the major payees, which approximated \$108 million, or 77.3%, of the total lead costs.

Name	Balance Per Books	% of Total Lead Costs
Virgin Offers	\$ 52,522,741.47	37.6%
KMPG*	16,485,908.45	11.8%
Paradigm Visions, Inc.	13,681,112.26	9.8%
Cathexis	13,421,957.31	9.6%
eDirectsoftware Limited	11,871,579.49	8.5%
Total	<u>\$ 107,983,298.98</u>	<u>77.3%</u>

* KMPG is a call center in the Phillipines.

The accounting books and records show that \$42.6 million was paid by I Works for outside services from its inception through December 31, 2010, of which more than \$9.6 million, or 22.6%, was paid to the affiliated entities and shell companies. Additionally, approximately \$12 million, or 28.2%, was paid to Natures Best/Amirouche and Norton LLC in 2009. Natures Best/Amirouche and Norton LLC were Arizona companies that pushed “free trials” of acai berry products and allegedly repeatedly billed customers without permission. These entities were sued by the Arizona and Illinois Attorneys General in 2009.

The next significant expense on the books was payroll of \$35,485,066.28 during the same period. Based upon discussions with Scott Leavitt and the review of the accounting records, the Temporary Receiver determined that a majority of the payroll was paid by the payroll processors: Employee Plus Inc. (after 2003) and American Employment Group (before 2003). Employee Plus Inc. processed the employee payroll for I Works and its affiliates. Further details will be discussed below in the Employee Plus Inc. section.

I Works’ total net income from its inception through January 11, 2011 was approximately \$48.4 million and its operating profit before depreciation expense was about \$50.6 million. Nearly \$50.4 million, or 99.6%, of the operating profit was paid to Jeremy Johnson or for his benefit or was transferred to his affiliates. More detail of capital contributions and withdrawals will be discussed separately under the “Distributions and Payments to Jeremy Johnson” section of this report.

Employee Plus, Inc.

Under Tab 5 are the balance sheet and income statements by year for Employee Plus, Inc. (Employee Plus). Employee Plus was incorporated in Utah in 2003 and Scott Leavitt is the titular owner. Employee Plus also opened the merchant accounts and processed the transactions for I Works’ Internet operations. The income received and the amounts transferred back to I Works and its affiliates were recorded as “income-grant search” and as “outside services expense”, respectively, which amounts were recorded as shown below.

<u>Per Books</u>	<u>Amount</u>
Income-Grant Search	\$32,020,474.67
Outside Services Expense	
I Works	\$18,387,984.92
Raven Media	\$7,900,000.00
Zibby	\$2,185,000.00
MJL Holdings	\$1,600,989.57

The Corporate Defendants' accounting records show that a significant portion of the payroll for I Works and its affiliated entities was processed and paid by Employee Plus. The funds for payroll received and disbursed were recorded as payroll preparation income and payroll expense on Employee Plus' books, which amounted to \$30,123,359.05 and \$29,296,398.57, respectively.

Elite Debit, Inc.

Elite Debit, Inc. (Elite Debit) was incorporated in late 2009 and is solely owned by Jeremy Johnson. Based upon a review of financial documents, Elite Debit was a processing company processing transactions for merchants.

Elite Debit's balance sheet as of December 31, 2010 and income statements from inception through December 31, 2010 are under Tab 6.

The accounting books and records of Elite Debit show the total revenue from inception through December 31, 2010 was approximately \$4.5 million, which is primarily comprised of approximately \$2.5 million from processing and \$2.0 million of income from Triple Seven LP for the same period.

Based on the additional documents obtained by the Temporary Receiver, Triple Seven LP appears to be related to Jeremy Johnson, and will be discussed below.

Elite Debit's most significant expense was outside payroll expense paid to Employee Plus, totaling \$1,040,822.22. Elite Debit also paid \$519,884.01 of SunFirst Bank fees and \$480,635.09 for commissions to various entities and individuals.

The Temporary Receiver reviewed the accounting details and identified various loans and investments made on behalf of Jeremy Johnson or to others related to or affiliated with Jeremy Johnson as shown below.

Account	12/31/10 Balance Per Books
Loan - SunFirst Bank	\$ 950,000.00
Loan - Orange Cat Investments	700,000.00
Loan - Loyd Johnston	290,000.00
SunFirst Stock (investment)	500,000.00
	<u>\$ 2,440,000.00</u>

According to additional documents and information obtained by the Temporary Receiver, the \$950,000 classified on the books as a loan appears to be an investment in SunFirst Bank stock. Accordingly, the investment in SunFirst Bank stock by Elite Debit totaled \$1,450,000² as of December 31, 2010.

A net loan amount of \$1,077,185.60 from Jeremy Johnson as of December 31, 2010 was classified as a capital contribution.

Money Harvest, Inc.

Similar to Elite Debit, Money Harvest, Inc. (Money Harvest) was also incorporated in late 2009 and Loyd Johnston is the titular owner. Money Harvest's balance sheet as of December 31, 2010 and income statements from inception to December 31, 2010³ are attached at Tab 7. Money Harvest was also a processing company processing transactions for merchants.

The accounting books and records show that total revenues and the operating expenses were \$3,436,701.39 and \$5,464,937.89, respectively. Outside service expenses were \$4,393,617.80. Below is the detailed breakdown of the outside service expenses paid.

² According to the accounting books and records, the payments of \$1,450,000 were paid and recorded in August and September 2010, respectively.

³ The QuickBooks data file for this entity was named Money Harvest, but the data contained in the file was named Elite Debit by the Receivership Defendants.

<u>Name</u>	<u>Memo</u>	<u>Balance</u>
Jeremy Johnson		\$ 2,599,975.00
Payroll-Chad Elie		450,500.00
Chad Elie		479,312.56
Net Web Funds **		270,100.00
I works		220,000.00
CPA Upsell		100,000.00
Triple 7		51,935.86
Elite Debit		31,986.53
Priority Debit		50,025.00
Robert Tovmasyan	Chad	30,200.00
SunFirst	SunFirst Computer Equipment	62,288.10
Others		47,294.75
TOTAL		\$ 4,393,617.80

** According to public records, this is a DBA of Powder Monkeys LLC.

The balance sheet as of December 31, 2010 lists the following loans and investments:

<u>Account</u>	<u>12/31/10 Balance Per Books</u>
Loan - SunFirst Bank	\$ 800,000.00
Loan - Loyd Johnston	15,000.00
SunFirst Stock (investment)	500,000.00
Total	<u>\$ 1,315,000.00</u>

According to the additional documents and information obtained by the Temporary Receiver, the \$800,000 classified as a loan appears to be an investment in SunFirst Bank stock, which would make the total investment in SunFirst Bank stock by Money Harvest \$1,300,000⁴.

The accounting books and records also show a loan of \$3,359,754.95 from Triple Seven, LP as of December 31, 2010 as a capital contribution.

⁴ According to the accounting books and records, the payments of \$800,000 and \$500,000 were paid and recorded in January 2010 and August 2010, respectively.

Affiliated Entities

Zibby, LLC

Zibby, LLC (Zibby) was incorporated in 2003 and is co-owned by Defendant Jeremy Johnson and his wife Sharla Johnson. It appears this entity was formed primarily to hold a number of real estate properties for Jeremy Johnson and Sharla Johnson. Under Tab 8 are the balance sheet and income statements for Zibby.

Zibby operated at a loss of \$595,805.05 since its inception. The total capital contribution, net of partner withdrawals, was about \$9.8 million and paid by I Works.

According to the accounting books and records, the total fixed assets were valued at approximately \$20.1 million as of January 10, 2011, which were primarily comprised of raw land, rental properties and investment properties:

	Book Value (including improvement value)	Note Balance Per Books
Hanger	\$ 36,000.00	
Investment Properties		
82 West 700 South, St George	\$ 300,190.00	\$ 202,180.84
43 North 100 West, Ephraim	147,585.43	123,589.69
575 East 30 North, Ephraim	192,379.83	
1861 Paragon Dr, St George	<u>1,450,940.91</u>	1,200,350.72
	2,091,096.17	
Raw Land		
14.78 Acres Raw Land, St George	\$ 165,038.37	
20 Acres, Beryl	5,000.00	
46.68 Acres , St George	333,281.90	
10 Acres, Ephraim	613,385.84	200,000.00
102 Acres, St George	77,376.80	
Vacant Land, Washington	<u>10,595,596.29</u>	6,108,000.00
	11,789,679.20	
Rental Properties		
1626 West Chateau Circle, St George	\$ 309,000.00	272,169.50
2356 East River Drive, Beaver	338,456.72	286,227.95
Car Lot, St George	1,184,707.65	692,093.01
Office Building 13 W. 700 S., Ephraim	670,396.89	
Tabernacle Towers, St George	<u>3,709,730.86</u>	2,042,155.78
	6,212,292.12	
Total Book Values of the real estate properties	\$ 20,129,067.49	<u>\$11,126,767.49</u>
Less: Related Note payables, mortgages and loans	(11,126,767.49)	
Net Value of the real estate properties	<u>\$ 9,002,300.00</u>	

The Temporary Receiver investigated the 102 acres of raw land in Washington, Utah with an approximate value of \$10.6 million as carried on the books of Zibby. This property was foreclosed by the lender in March 2010. If this property and its related liabilities were removed, the net value for the real estate properties would be reduced by approximately \$4.5 million.

The Temporary Receiver also discovered that the following real estate properties were first acquired by Zibby but later transferred to Jeremy Johnson or his parents, which were recorded as withdrawals by Jeremy Johnson and Sharla Johnson.

	Transfer Date	Book Value	Transferee
529 Wood View Circle	12/31/09	\$7,857,911.44	Jeremy Johnson
Riverfront Circle	7/10/08	\$520,921.41	Kerry & Barb Johnson (parents)

Zibby Flight Service, LLC

Zibby Flight Service, LLC (Zibby Flight Service) was incorporated in Delaware in 2002 and is owned by Jeremy Johnson and Sharla Johnson for the purpose of holding a number of airplanes and helicopters for Jeremy Johnson. Zibby Flight Service's balance sheet as of December 31, 2010 and income statements from its inception to December 31, 2010 are attached at Tab 9.

According to its accounting books and records, below is the list of the airplanes and helicopters held as of December 31, 2010:

Vehicle Type	Make	Model	Year	Book Balance (including improvements)	Loan Balance Per Books
Airplane	Cheyenne	Piper	1985	\$ 1,827,050.97	\$ 1,315,608.97
Helicopter	EC	EC 130	2008	2,848,222.15	2,217,200.64
Helicopter	Robinson	R-44 II	2005	380,000.00	
Airplane	Piper	PA-46-350P	2009	1,045,037.00	
Airplane	Cessna	P-210	1978	281,264.71	
Airplane	Beach Sierra	MC-604	1978	61,500.00	
Airplane	Piper	Navajo	1968	504,247.04	
Total Gross Value Per Books				<u>\$ 6,947,321.87</u>	<u>\$ 3,532,809.61</u>

The Temporary Receiver discovered that a Euro Chopper with a gross value of \$575,000 was transferred to Jeremy Johnson in August 2007 and removed from the entity's books. In May 2010, Jeremy Johnson pledged three of the aircraft for a loan of \$1,100,000 from Far West Bank, which does not appear on the books.

The total net loss of Zibby Flight Service from its inception to December 31, 2010 was \$5,849,297.50, and the cash operating deficit before depreciation expense was \$1,139,410.50 for the same period. The deficit was primarily due to high aircraft maintenance costs, such as fuel, insurance, repairs and rent for aircraft parking. The total net capital contribution as of December 31, 2010 amounted to nearly \$4.7 million and was funded by I Works.

Orange Cat Investments, LLC

Orange Cat Investment, LLC (Orange Cat) was incorporated in 2007 and is owned by Jeremy Johnson and Sharla Johnson. Under Tab 10 are the balance sheet as of January 10, 2011 and income statements from its inception to January 10, 2011.

The accounting books and records show that Orange Cat held a number of real estate properties and houseboats as of January 10, 2011:

	<u>Balance Per Books</u>
Real Estate	
California Home	
127 Hollister Ave. Santa Monica	\$2,800,114.76
Improvements California Home	<u>14,027.14</u>
Total California Home	\$2,814,141.90
House - 260 North Main, St. George	
House - 260 North Main, St. George	250,225.00
260 North Main Improvements	158,776.88
Furniture Main St. Home	<u>5,890.59</u>
Total House - 260 North Main, St. George	<u>\$ 414,892.47</u>
Total Real Estate	<u><u>\$3,229,034.37</u></u>
House Boat	
Peps 1 - Houseboat	
Peps 1 - Houseboat	\$ 900,000.00
Furniture	<u>14,626.49</u>
Total Peps 1 - Houseboat	\$ 914,626.49
Improvements Houseboat - Peps 1	288,515.81
Animal House - House Boat	<u>250,000.00</u>
Total House Boat - Gross	\$1,453,142.30
Less: Town & Country Line - House Boat	<u>(746,244.80)</u>
Total House Boat - Net	<u><u>\$ 706,897.50</u></u>

The net capital contributions to Orange Cat totaled \$4,072,617.86 on the books and were funded by I Works.

New Horizons Finance, Inc.

New Horizons Finance, Inc. (New Horizons) was incorporated in 2004 and Andy Johnson, who is Jeremy Johnson's brother, is the titular owner. New Horizons' balance sheet as of December 31, 2010 and the income statements shown by year from its inception through December 31, 2010 are attached at Tab 11.

Total income was \$7,049,300.75 from its inception through December 31, 2010, which was primarily from contracted processing income of approximately \$5.8 million, or 82.5%. The profits earned were mainly used and paid for outside service expenses and outside payroll expenses totaling \$4,936,391.39 and \$495,434.23, respectively. Similar to the other affiliated entities, the outside payroll expenses were paid to Employee Plus for payroll processing. The outside service expenses are primarily comprised of the following payees:

Name	Balance	% of Outside Service Expenses
I Works	\$ 1,826,336.65	37.00%
New Beginnings Consulting	402,690.66	8.16%
SKKP	281,024.63	5.69%
Summit Group	234,822.74	4.76%
KMPG	215,734.29	4.37%
Jeremy Johnson	212,862.23	4.31%
Zibby	192,322.98	3.90%
Business Development Systems, Inc.	159,553.62	3.23%
Total	\$ 3,525,347.80	71.42%

The accounting books and records show loans from I Works and Jeremy Johnson amounted to \$245,000 and \$319,500 as of December 31, 2010, respectively, which are classified as capital contributions. The accounting books and records also show New Horizons owns a trailer park valued at \$360,194.53 as of December 31, 2010, which the Temporary Receiver has not yet confirmed.

Other Related Entities

The Temporary Receiver learned that Chad Elie filed a lawsuit against Jeremy Johnson. Chad Elie entered into a business venture with Jeremy Johnson to provide payment processing services for Chad Elie's online merchants. According to an e-mail written by Jeremy Johnson on December 11, 2010, Chad Elie was entitled to 50% of the profits.

Based on reviewing other documents and resources, it appears that there are three entities that are associated with the business venture between Jeremy Johnson and Chad Elie. They are Triple Seven, LP (Triple Seven), Powder Monkeys, LLC (Powder Monkeys) and Mastery

Merchant, LLC (Mastery Merchant). The Temporary Receiver was unable to locate the accounting records at Receivership Defendants' premises concerning these three entities.

The Temporary Receiver investigated and determined that the public records listed Jason Vowell as the manager of the three entities. Todd Vowell is the brother of Jason Vowell (Vowells), and both are long-time friends and neighbors of Jeremy Johnson. The Temporary Receiver also identified a high volume and amount of transactions and/or fund transfers between Jeremy Johnson and the entities apparently controlled by the Vowells. According to the business searches performed by the Temporary Receiver, these Vowells entities include, but are not limited to, Paydirt Capital LP, Paydirt Management Inc., Paydirt Properties LLC and Kombi Capital LP (Kombi Capital).

The Temporary Receiver discovered a few pages of QuickBooks accounting printouts of these three entities at the Receivership Defendants' premises. Numerous payments listed under outside expenses were paid to a casino hotel for expenses and to California Numismatic for gold purchase as shown below.

<u>Entity</u>	<u>Account</u>	<u>Amount</u>	<u>Note</u>
Podwer Monkeys	Outside Service-JJ	\$ 100,000.00	Payments to/for Wynn
Triple Seven	Outside Service-JJ	782,300.00	Payments to/for Wynn
			Payment to California
			Numismatic for Gold
Triple Seven	Outside Service-JJ	500,000.00	purchase
Total		<u>\$ 1,382,300.00</u>	

In addition, the pleadings in the Chad Elie litigation indicate that, from March 2010 through October 2010, the average monthly income reached \$2.8 million. One of the supplemental financial schedules (See Tab 12), which was initially from Jeremy Johnson, shows a number of significant payments not only to Chad Elie but also to or on behalf of Jeremy Johnson for the same period as follows:

	<u>Amount</u>
<u>Chad Elie</u>	
Payments for Chad Elie	\$ 3,218,348.00
Legal Expense-Chad Elie	1,912,272.54
Total	<u>\$ 5,130,620.54</u>
<u>Jeremy Johnson</u>	
Payments for Jeremy Johnson	<u>\$ 2,950,383.19</u>
<u>Other payments</u>	
Payments to Kombi Capital	\$ 6,401,849.62
TD Ameritrade	5,000,000.00
Payments to JMD Energy	1,150,000.00
Payments to AIC	832,750.00
Income Tax Payments	1,635,633.00
Total	<u>\$ 15,020,232.62</u>

The pleading documents also indicate that the \$1,150,000 payment to JMD Energy was to purchase interests in the JMD 12-4-4-3 Well in Duchesne Country, Utah, and Jeremy Johnson later transferred 33.3% of his interest in this well to his father, Kerry Johnson, in June 2010. In addition, approximately \$6.4 million was paid and invested in Kombi Capital, which is apparently owned by the Vowells.

A supplemental schedule in the pleading documents contains a list of the assets of Kombi Capital totaling \$6.4 million, which is comprised of a \$2 million brokerage account, two Woodview houses, Ellm Valley Land, Rockville house, Springdale land, and several note receivables (advances to others). This schedule is attached at Tab 13.

Distributions and Payments to Jeremy Johnson

As previously discussed, Jeremy Johnson and his controlled entities withdrew at least \$50 million from I Works' profits. The Temporary Receiver also learned of a large volume of money transfers and inter-company transactions among Jeremy Johnson and the entities he owned or controlled recorded as capital contributions and/or withdrawals on the books, some of which should be netted out.

A preliminary analysis performed by the Temporary Receiver shows the contributions and withdrawals recorded on each entity's books and demonstrates how the withdrawals were made by or on behalf of Jeremy Johnson and distributed to affiliated entities for use in acquiring and holding investments and assets. These affiliated entities include, but may not be limited to, Zibby, Zibby Flight Service, Orange Cat, Jeremy Johnson's offshore entities,

Raven Holdings Corp. and Belize Beach Holdings Ltd. in Belize, and Raven Internet Media in the Philippines.

Based on the Quickbooks Accounting Records of Each Entity			
Entity	Partner Contributions	Partner Withdrawals	Net Contributions
I Works		\$ (50,400,573.57)	\$ (50,400,573.57)
Zibby	\$ 25,790,250.28	\$ (15,988,156.13)	\$ 9,802,094.15
Zibby Flight Service	\$ 4,758,384.95	\$ (97,541.97)	\$ 4,660,842.98
Orange Cat	\$ 4,072,617.86		\$ 4,072,617.86

Breakdown of I Works' Capital Withdrawals Based on Preliminary Analysis	
Name	Amount
Zibby	\$ 9,802,094.15
Zibby Flight Service	4,660,842.98
Orange Cat	4,072,617.86
Residential Properties (Note)	7,962,766.24
Tax Payments-IRS & US Treasury	4,538,133.75
State Tax Payments-Utah State Tax Commission	1,116,040.50
Raven Holdings & Raven Internet Media	2,528,560.49
Scott Leavitt	2,136,413.99
Kitco	1,565,204.18
LDS Church/Little Valley Fifth Ward	1,500,000.00
Dreamworks Mortgage	1,551,964.74
Paydirt	1,797,889.48
Heritage Auto/JDK	1,802,215.86
KBE Energy (Oil Investment)	1,800,000.00
Brockman Ranch LLC	974,256.86
Hilton Car Wash	654,459.24
W.F. Corporation	500,000.00
Remainder	1,437,113.25
Total	<u>\$ 50,400,573.57</u>

Note: According to the accounting records of the Corporate Defendants, the payments for the residential properties included the payments for 529 Woods View Circle and Riverfront Circle, which were transferred to Jeremy Johnson and his parents from Zibby and recorded as capital withdrawals.

Jeremy Johnson, his wife and parents also received substantial payments and distributions from Jeremy Johnson's business operations and entities he owned or controlled in addition to the withdrawals and distributions from I Works. These other payments to Jeremy Johnson and Sharla Johnson, which raise his total payments and distributions to approximately \$59 million, are set out in the following schedule.

	Capital Withdrawals	Payroll			Other Payments (Note)	Total
		Jeremy Johnson	S. Johnson (Wife)	K&B Johnson (parents)		
I Works	\$ 50,400,573.57	\$ 1,222,302.92	\$ 57,063.53			\$ 51,679,940.02
Employee Plus		815,772.83	808,587.27	\$ 798,165.30		2,422,525.40
New Horizons					\$ 212,862.23	212,862.23
Money Harvest					2,599,975.00	2,599,975.00
Triple Seven					2,950,383.19	2,950,383.19
	<u>\$ 50,400,573.57</u>	<u>\$ 2,038,075.75</u>	<u>\$ 865,650.80</u>	<u>\$ 798,165.30</u>	<u>\$ 5,763,220.42</u>	<u>\$ 59,865,685.84</u>

Note: Other payments include payments recorded under outside service expenses and other payments to Jeremy Johnson on the books.

The Temporary Receiver is continuing to review and analyze the financial data of I Works, controlled companies, and other entities that may be affiliated, which may uncover a higher amount of cash payments or withdrawals by or on behalf of Jeremy Johnson as well as the corresponding investments and assets acquired.

Funds Deposited in Casinos and Gambling Losses

The Temporary Receiver described above that numerous payments from Triple Seven and Powder Monkeys were made to a Las Vegas casino for the benefit of Jeremy Johnson. Additionally, the Temporary Receiver obtained documentation from the casino, which showed in summary that the total funds deposited to Jeremy Johnson's account were approximately \$2.8 million and the net loss was approximately \$1.3 million from June 2006 to January 2011.

Available Details of Real Properties

Following is the detail of the initial inspections or information learned about most of the real properties currently known to be owned by Jeremy Johnson, or his family, or his controlled entities.

529 Woods View Circle, St. George, Utah

This home is currently being used by Jeremy Johnson as his primary residence. It is an extravagant home, reportedly 22,000 square feet located on a large lot within a gated community. Documents located at the Corporate Defendant's office reflect a cost of

approximately \$8.0 million to purchase the land and build the home. The current market value of the home is estimated to be approximately \$4.0 million.

On January 18, 2011, the Temporary Receiver asked Jeremy Johnson for permission to visit the home and take a photographic inventory of the contents. Jeremy Johnson refused to allow the Temporary Receiver inside the residence. The following week, the Temporary Receiver was allowed into a garage and utility room in a separate building from the house.

There is a first mortgage on the home for approximately \$3.0 million with SunFirst Bank. A second Trust Deed, secured by this home and five other parcels of land, was recorded on October 13, 2010 for \$6.5 million by Zibby and Sharla Johnson for the benefit of Triple Seven. A virtually identical blanket lien for the benefit of Triple Seven in the amount of \$6.5 million was also recorded on a home at 127 Hollister Avenue in Santa Monica, California owned by Orange Cat. Jeremy Johnson signed the trust deed as manager of Orange Cat. The Temporary Receiver has not been able to locate any documents or financial data that show any financial consideration was paid for either of these trust deeds.

620 East Main Street, Rockville, Utah

The single level home is titled to Jeremy Johnson and is located on a large lot with access to the Virgin River. A family reportedly occupies the property rent free. The Temporary Receiver will investigate and determine the occupancy arrangements. There is a mortgage of approximately \$365,000 with Kombi Capital. The Temporary Receiver will be investigating and determining if this loan is an arm's length transaction for consideration. The home was purchased for \$365,000, but a local broker estimates the current value of this home at about \$270,000.

1673 South Cliffrose Drive, St. George, Utah

This 7,556 square-foot single family residence is titled to Jeremy Johnson and Sharla Johnson and is located in an exclusive gated community called Stone Cliff. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. The home is built on a view lot and was purchased for \$1.6 million. There is a mortgage with Chase for approximately \$1.0 million. A local broker estimates the current value at about \$850,000.

82 West 700 South, St. George, Utah

This is an older 1,664 square-foot single family residence titled to Sharla Johnson and located on a busy street. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. It was purchased for \$300,190 and has a mortgage with Chase for approximately \$202,000. A local broker estimates the value at about \$250,000.

1861 Paragon Drive, St. George, Utah

This 4,579 square-foot single level home is titled to Sharla Johnson and was featured in the 2006 Parade of Homes and is located in an exclusive gated community called Stone Cliff. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. The home has custom upgrades such as stone columns, domed ceiling with unique architecture and an outdoor pool. It was purchased for \$1,420,740 and has a mortgage with Chase of approximately \$1.0 million. A local broker estimates a current value at only \$700,000.

1140 East Fort Pierce Drive #36, St. George, Utah

This vacant split level 2,312 square-foot home is titled to Sharla Johnson and is located in a gated community that is surrounded by much older homes. It was purchased for \$360,000 and has a mortgage with Chase of approximately \$290,000. The value based on a local broker's opinion of value is \$190,000.

260 North Main Street, St. George, Utah

This 2,592 square-foot single level home is titled to Orange Cat and is located near the middle of St. George. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. It was purchased for \$250,225 and other resources indicated it may have mortgages⁵ totaling \$263,000. The value based on a broker's opinion of value is \$225,000.

1626 West Chateau, St. George, Utah

This 3,391 square-foot two story single family residence is titled to Sharla Johnson and is surrounded by higher end homes. The property includes a large lot although it does not have many upgrades. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. It was purchased for \$309,000 and has a mortgage with Wolf Mountain, LLC for approximately \$272,000. The value based on a broker's opinion of value is \$300,000.

2356 East River Drive, Beaver, Utah

This single family home is titled to Jeremy Johnson and is in the river bottoms east of Beaver, Utah. It is on a large lot with a barn. A family reportedly occupies the property. The Temporary Receiver will investigate and determine the occupancy arrangements. It was purchased for \$338,456 and has a mortgage with Bank of America for approximately \$286,000. The Temporary Receiver is investigating the current value of this property.

⁵ No mortgage is currently recorded on the books for this property.

Hanger at the Old St. George Airport – Parcel #SG-AIR-20

Zibby, owned by Jeremy and Sharla Johnson, purchased this hanger for \$36,000. The hanger is located on ground owned by the city of St. George. A new airport has been constructed and the city is requiring all tenants to remove all aircraft and buildings within the next few months. The cost to move the hanger would exceed any potential value. The Temporary Receiver anticipates abandoning the hanger.

5.08 Acres of Raw Land in Santa Clara, Utah

This property is comprised of three lots and was purchased by Santa Clara Creek Properties, LLC for \$100,000. Other sources indicate that Jeremy Johnson owns a minor percentage of Santa Clara Creek Properties, LLC. A local broker's opinion of value is \$150,000.

Five Parcels of Raw Land in Washington County, Utah

The five parcels total 164.63 acres and are located in the Greenfield area near Washington Dam Road. A majority of the property lies within the Virgin River and river flood plain. The assessed value is \$358,885 and the parcel numbers are 4200-B-HV, 4201-A-HV, 4201-B-HV, 4203-HV and 4150-B-HV. Zibby purchased the five parcels for \$575,697. This raw land is pledged as security for a blanket mortgage with SunFirst Bank for approximately \$1,084,543⁶. The Temporary Receiver has not been able to confirm the extent of liens against the property. A local broker estimated the value of the land at about \$350,000.

Raw Land in Beryl, Utah

This property is a 20-acre parcel in the unincorporated part of Iron County, Utah and is zoned as agricultural property. Zibby Flight Service purchased the property for \$5,000 and has a current value of approximately \$10,000.

302 West Hilton Drive, St. George, Utah:

There is an operating car wash on this commercial property. Zibby purchased the property and built the car wash for a total of \$1,110,695. The property has been transferred several times. On October 16, 2007, Zibby transferred the property by quit claim deed to Hilton Sparkle & Shine, LLC, a Utah Limited Liability Company owned by Jeremy and Sharla Johnson. On May 3, 2010 Jeremy and Sharla Johnson signed a warranty deed transferring title from Hilton Sparkle & Shine, LLC, to Hilton Auto Detail, LLC. The Utah State Secretary of State lists Jeremy Johnson and Christopher Wade as managing members of Hilton Auto Detail, LLC. On October 28, 2010, Jeremy Johnson and Christopher Wade signed a warranty deed transferring the property from Hilton Auto Detail, LLC back to Hilton Sparkle & Shine, LLC.

⁶ No mortgage is currently recorded on the books for this property.

Business records located at the Corporate Defendants' offices show a mortgage of approximately \$564,000 in favor of Bank of America. Other resources indicate that its current value may equal the loan balance. The Temporary Receiver is still analyzing the value of the property.

1792 South Blackridge Drive, St. George, Utah:

Zibby purchased the commercial lot and constructed a car lot and building at a cost of \$1,184,707. The property is currently occupied by Xotic Motor Sports. The Temporary Receiver will investigate and determine the occupancy arrangements. There is a mortgage in favor of Far West Bank for approximately \$692,000. A commercial broker estimates the value at about \$1.0 million.

While conducting some research and title searches at a local title company, the Temporary Receiver discovered that on January 13, 2011 Jeremy and Sharla Johnson executed a warranty deed transferring this property to Golden Star Property, LLC. Records at the Utah Secretary of State list Frank Habibian as the manager of Golden Star Property, LLC. The warranty deed was recorded on January 19, 2011, six days after the Temporary Restraining Order was entered. No proceeds from this transfer have been turned over to the Temporary Receiver. This transfer is under further investigation.

392 W. 400 S. Manti, Utah

Jeremy Johnson is a 50% owner with a local resident of Meridian Holdings LLC, which purchased this 2,400 square-foot residential duplex about three years ago for \$120,000. Currently it is rented for \$1,280 a month, which does not cover all the property expenses. There is a recorded mortgage on the books for about \$134,000, payable to New Horizons, discussed above. A broker estimates the value at about \$148,000. However, the local co-owner believes the property would sell for about \$120,000 after a lengthy marketing period.

575 E. 30th N Ephraim, Utah

Jeremy Johnson purchased this single family residence when it was near-new in 2006 for \$155,000. The Temporary Receiver has not inspected the property, and its size, current condition and value are unknown. The Temporary Receiver has been informed the property is occupied by two persons with current rental arrangements to be determined. Other resources indicate that it may have a mortgage⁷ of \$79,477.

43 N 100 W Ephraim, Utah

Jeremy Johnson purchased this two story 2,600 square-foot Victorian single family residence in 2005 for approximately \$148,500. The property is rented and appears to be in good

⁷ No mortgage is currently recorded on the books for this property.

condition, although the current rental arrangements are unknown. A broker estimates the value at about \$125,000. The recorded mortgage on the books is approximately \$124,000.

11⁸ W 700 S, Ephraim, Utah

Zibby purchased this office building in 2007 for \$336,926. The property includes a parking area. The building has ground and basement floors, and apparently was converted to a fully outfitted call center. The property is currently vacant, appears to be approximately 6,000 square feet, and is in good condition. The current market value will be determined. The Temporary Receiver is not aware of any mortgage recorded on this property.

750 South Main Street, Ephraim, Utah

Zibby purchased this 10 acre land parcel for \$423,793. It is located slightly west of the downtown area of Ephraim, but within city limits. A broker believes the property has a 50 foot right-of-way off Main Street, which is also Highway 89. The broker believes the property is well-located and should be worth about \$375,000, although reportedly current marketing times are lengthy. The Temporary Receiver will confirm the market value of the property and the approximate required marketing time. The recorded mortgage on the books is \$200,000.

575 S Main Street, Richfield, Utah

JDK, Inc., which Jeremy Johnson claimed he owns in full, purchased this small office building on a large lot, with an adjacent vacant small structure in poor physical condition. The property was apparently used for retail car sales, and reportedly has been mostly vacant for two or three years. The general structure of the office building is in satisfactory condition, although the interior has suffered water damage from roof leaks. Reportedly, there is limited rental demand for the property. The property was purchased in 2006 for \$425,520. Other resources indicate that it may have a mortgage⁹ of approximately \$159,000. The current market value will be determined.

147 100 W Mendon, Utah

Zibby purchased this small mobile home park, with eight mobile homes and an additional seven rentable mobile home sites in 2007, for approximately \$265,000. Apparently, the property was transferred to SLI, LLC, 50% owned by Jeremy Johnson and 50% by Duane Fielding. The property is on a fairly steep unpaved slope covered with gravel. One of the mobile home sites is vacant and reportedly one of the purchased mobile homes was destroyed in the last year. The purchased mobile homes range in age from 10 to 30 years and the physical condition and appeal of the park property is substantially below average.

⁸ The utility company reports that the address of this property is 11 West 700 South, Ephraim, Utah.

⁹ No mortgage is currently recorded on the books for this property.

The Temporary Receiver is currently investigating the rental arrangements for the mobile home sites and the rented mobile homes. The current market value will be determined based on operating income and information from local brokers.

Approximately 5,000 acres near Idaho Falls, Idaho

The books of I Works included several payments to Brockman Ranch, LLC, but without further details or information. Other resources indicated that Jeremy Johnson was a 50% owner of ranch land originally purchased for \$5,500,000 and with a current loan balance of \$2,611,486. The Temporary Receiver made contact with the other 50% owner, and later his attorney, and learned that Jeremy Johnson and the other person each own 50% of Brockman Ranch, LLC. The initial capital contribution in the LLC was \$1,250,000 for each, and was used as a down payment for the \$5,500,000 purchase of 5,000 acres of grazing land near Idaho Falls, Idaho. The terms of financing provided by the seller required annual payments of about \$400,000, or \$200,000 each. Reportedly the current balance of the land loan is about \$2,600,000, but the Temporary Receiver has not yet confirmed that amount.

Jeremy Johnson did not make his required capital contribution as of January 1, 2011. When the Temporary Receiver made contact with the attorney, he reported the other owner was the managing member and in the process of restructuring the terms of the land loan. The attorney, along with a representative of the other owner, claimed that the 5,000 acres purchased are now worth considerably less than the original purchase price. The Temporary Receiver has requested documents and information about the asset and the underlying transaction, has received some of the requested information, and is reviewing it. The underlying net value and current liquidity of this investment is unknown at this time. The Temporary Receiver will continue to gather information and evaluate this investment.

127 Hollister Avenue Santa Monica, California

Orange Cat purchased this single family residence located about one block from the Santa Monica shore in March, 2009. Public records indicate the purchase price was \$2, 775, 000, and it was recorded on the Orange Cat books for \$2,800,114. The two-story house has 2,791 square feet, is about five years old, and reportedly includes upgrades and expensive furnishings. Orange Cat originally purchased the property for cash but in February 2010 obtained a loan for \$1,500,000.

A second Trust Deed, secured by this home, another home and five parcels of other land in St. George Utah, was recorded on October 13, 2010 for \$6.5 million. The Deed of Trust was dated February 28, 2010 and Jeremy Johnson signed it as manager of Orange Cat. The Temporary Receiver has not been able to locate any documents or financial data that show any financial consideration was paid for this \$6.5 million Deed of Trust.

Vehicles, Boats and Trailers

The Temporary Receiver reviewed documents and electronic data located at the Corporate Defendants' offices that contained information on approximately twenty-six different cars and trucks, one motor home, several trailers and several off road vehicles. The Temporary Receiver located original title documents for 16 vehicles and two trailers.

On at least two occasions, the Temporary Receiver asked Jeremy Johnson about the location of these various vehicles. With the exception discussed below, Jeremy Johnson only stated that the vehicles were spread around at different locations and warehouses. He stated he did not know precisely where the vehicles were located. Jeremy Johnson did disclose the location of certain collectable vehicles in a hanger at the old St. George Municipal Airport and escorted the Temporary Receiver to inspect the vehicles. The Temporary Receiver took a photographic inventory of five cars, a snow plane and a four wheeler. The five cars included a restored 1957 Chevrolet Belair, a 1952 Ford and several "muscle" cars. Jeremy Johnson claimed not to know whether he or an associate owned the vehicles.

The Temporary Receiver is still attempting to learn the location of the remaining vehicles.

The Temporary Receiver has contacted the general counsel for the company owning the concession rights to Wahweap Marina and also contacted the onsite manager at the marina. The Temporary Receiver confirmed that two Skipperliner house boats are docked at rented slips at the marina. The Temporary Receiver is making arrangements to take control of the house boats.

Aircraft

Defendant Kevin Pilon provided the Temporary Receiver a worksheet containing details on eleven aircraft, consisting of four fixed wing airplanes and seven helicopters. Jeremy Johnson met the Temporary Receiver at the old St. George Municipal Airport and identified six aircraft on the worksheet and stated that two other aircraft had already been moved to the new airport. Jeremy Johnson was not aware of the location of several other aircraft that were purportedly leased or the persons or entities that had leased the aircraft.

The worksheet provided by Kevin Pilon identified Zibby Flight Service as the owner of three airplanes and four helicopters. Jeremy Johnson and Duane Fielding were identified as owners of two other helicopters. Duane Fielding was listed as the sole owner of one helicopter and KMPG, Inc., as the owner of a 1968 Navajo Piper. The Temporary Receiver accessed the registration information maintained by the Federal Aviation Administration to determine the registered owners of each aircraft. Six of the eleven owners listed on the worksheet were either not current or inaccurate. The aircraft identified as being owned by KMPG, Inc., is registered to Zibby Flight Service. Five helicopters appear to have been transferred to four different companies. The four companies are Trigger LLC, Scud Runner LLC, Choker Blocker LLC and two helicopters registered to Rotortrends, Inc. The

Temporary Receiver has requested documents from various secretary of state offices in order to determine the principals of each of these entities and investigate whether the apparent transfers are legitimate arms-length transactions supported by adequate consideration.

Turnover of Precious Metals

In response to the Temporary Receiver's demand for turnover of precious metals (discussed below) the Temporary Receiver met Jeremy Johnson in the driveway of his home on January 26, 2011. Jeremy Johnson escorted the Temporary Receiver into a detached garage that contained two safes. One safe contained various guns and ammunition. The second safe contained precious metals. The Temporary Receiver advised Jeremy Johnson that the Temporary Receiver was contracting with Brinks armored car service to transport the contents of the safe to a secure location and thereafter provide an inventory. In addition to the precious metals contained in the safe, there were two expensive wrist watches. Jeremy Johnson estimated the value of the contents of the safe to be approximately \$500,000. Later that day, Jeremy Johnson sent an email to the Temporary Receiver and provided his estimated inventory of the safe and the combination needed to open the safe (See Tab 14). On January 28, 2011 Brinks armored car service met the Temporary Receiver at Jeremy Johnson's garage and took custody of the contents of the safe.

In the Reply Memorandum on Emergency Motion to Continue Hearing on Preliminary Injunction (Document No. 81 filed February 4, 2011) counsel for Jeremy Johnson and the Corporate Defendants other than Employee Plus asserted that the Temporary Receiver violated the provisions of the TRO at page 15 by removing personal property, including jewelry, from his residence in his absence (footnote 4). This is incorrect in a number of ways. First, the section referred to in the TRO (section IX.C at page 9) refers only to Jeremy Johnson's assets and only prohibits the removal of Jeremy Johnson's personal property at his residence. Second, on January 21, 2011, the Temporary Receiver, through his counsel, demanded that: "Jeremy Johnson . . . immediately transfer and deliver to the Temporary Receiver . . . possession, custody and control of all of the Corporate Defendants' precious metals, including without limitation all gold and silver, in whatever form." (Tab 15 hereto). The Temporary Receiver expressly excepted Jeremy Johnson's precious metals from the demand, because of the prohibition set out at IX.C of the TRO. Mike Shaw (Shaw), counsel for Jeremy Johnson and all of the Corporate Defendants other than Employee Plus, called counsel for the Temporary Receiver on January 26, 2011 and agreed to turn over the precious metals at Jeremy Johnson's home to the Temporary Receiver on January 26, 2011. This was confirmed in an e-mail from Shaw to counsel for the Temporary Receiver, attached as Tab 16. Shaw wrote: "This email confirms our discussion that the receiver can begin the inventory/taking possession of the gold and silver at Jeremy's home on Woodsvie Circle tomorrow at 11:15 AM." Shaw never asserted, in either his phone call with counsel for the Temporary Receiver or in his confirming e-mail, that the precious metals were Jeremy Johnson's or that the Temporary Receiver could not remove them from a garage and utility room in a separate building from the residence. After the Temporary Receiver initially

inspected the precious metals on January 26, 2011 as agreed to between Shaw and the Temporary Receiver's counsel, Jeremy Johnson further provided the Temporary Receiver with a written inventory of the precious metals, including jewelry, and expressly permitted the Temporary Receiver to remove precious metals from his garage and utility room while Jeremy Johnson was away. He wrote: "I will be gone till next week but I will have access to my email and my phone should work most of the time too. Please store all this in a secure location." This e-mail is attached at Tab 14.

Bank Accounts

The Temporary Receiver served the Temporary Restraining Order on all known bank accounts and merchant accounts with other financial institutions and merchant processors that were used by the Receivership Defendants. Currently, funds turned over to the Receivership Defendants total \$83,466.01. The Temporary Receiver is continuing to confirm the balances of bank accounts and merchant accounts of the Receivership Defendants, and working with other financial institutions and merchant processors concerning the turnover of the funds.

Conclusion

As this report has stated, the accounting records and other documents reviewed to date confirm that several dozen entities and shell companies existed primarily to open bank accounts and to set up related merchant processing accounts. This spider-web of entities helped to create a consolidated income stream of at least \$332 million and provided Jeremy Johnson and his entities access to at least \$59 million. The records and documents further confirm that the \$59 million was dissipated by supporting lavish lifestyles, and investments in real properties, aircraft, vehicles, businesses, brokerage trading accounts, precious metals, and was distributed or loaned to family, friends, and related entities. Some of the investments appear to have lost significant value and most of the loans and distributions have limited or missing documentation. There appears to be a substantial amount of information to be located or revealed.

If the Temporary Receiver is made permanent, he will continue to examine and obtain values for the real properties, airplanes, and vehicles and attempt to locate, document, and recover the investments, distributions, loans and any other assets.

Respectfully submitted,

/s/

Robb Evans of Robb Evans & Associates LLC
Temporary Receiver

From: Jeremy Johnson [mailto:jeremyjohnson@cpaupsell.com]
Sent: Wednesday, January 26, 2011 1:30 PM
To: brick_kane@robbevans.com
Subject: Safe inventory

Brick,

Here is the inventory in the safe.

2 watches one gold Louis Vitton and one gold IWC
2 gold nuggets 1.5oz and 5+oz
46 1 oz palladium bars
3580 Canadian 1oz silver maple
1057 oz comdex silver bar
1000 silver .50 coins
32,000 silver quarters
10,000 silver dimes
20 gold coins
160 lbs of miscellaneous rare coins

Code to the safe is XXXXXX#

I will be gone till next week but I will have access to my email and my phone should work most of the time too. Please store all this in a secure location.

Thanks,

Jeremy

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.449 / Virus Database: 271.1.1/3412 - Release Date: 01/30/11 07:34:00

Exhibit A

Weinman, Dotan

From: Marcus_Smith@nvd.uscourts.gov
Sent: Wednesday, November 30, 2011 6:44 PM
To: ftcdocuments@gmail.com
Cc: bob_graham@graham.senate.gov; Guerard, Collot; chris.allred@usdoj.gov; craig@thomas.senate.gov; DeMille, David; dirk_kemphorne@kemphorne.senate.gov; Weinman, Dotan; Ramirez, Edith; harrisonj@washpost.com; info@mikelee2010.com; Brill, Julie; Brooke, J. Ronnie; jdobner@ap.org; jesse_helms@helms.senate.gov; Kopec, Janice; Leibowitz, Jonathan D.; john_ashcroft@ashcroft.senate.gov; john_kerry@kerry.senate.gov; Young, June; kamena@washpost.com; larry_craig@craig.senate.gov; linda.mcfarlane@usdoj.gov; melodie.rydalch@usdoj.gov; mrogers@sltrib.com; ncarlisle@sltrib.com; 'ncrane@stirba.com'; Dennis Romboy; Yodaiken, Ruth; senator@enzi.senate.gov; senator@feingold.senate.gov; senator@rockefeller.senate.gov; senator@robb.senate.gov; senator@thurmond.senate.gov; senator@hollings.senate.gov; senator@bryan.senate.gov; senator@mcconnell.senate.gov; senator@biden.senate.gov; senator.hutchinson@hutchinson.senate.gov; senator_coverdell@coverdell.senate.gov; senator_dewine@dewine.senate.gov; senator_domenici@domenici.senate.gov; senator_gorton@gorton.senate.gov; senator_hatch@hatch.senate.gov; senator_kohl@kohl.senate.gov; senator_lieberman@lieberman.senate.gov; senator_mccain@mccain.senate.gov; senator_reid@reid.senate.gov; senator_thompson@thompson.senate.gov; sen_dodd@dodd.senate.gov; tsukayamah@washpost.com; uag@utah.gov; usaut.webmaster@usdoj.gov; vermont@jeffords.senate.gov; wendell_ford@ford.senate.gov
Subject: Re: Subpoena
Attachments: CollotEmail.pdf; CoverLetter.pdf; TranscripPagesFromHearing.pdf; Polygraph Test.pdf

Mr. Johnson, I am instructed by Judge Hunt to tell you that you are forbidden to communicate with the Court or any of the Judge's chambers staff by email. Any communication with the Court must be by a motion or other proper document filed with the Clerk of Court. Any further violation of this instruction will result in sanctions.

Furthermore, your email address, <ftcdocuments@gmail.com>, is an improper use of a governmental agency's initials and is misleading, and you are instructed to change it to a name which accurately identifies you as the sender, and does not present the impression that it is an official governmental or court source. Please comply forthwith.

Marcus Smith,
on Behalf of Judge Roger L. Hunt

From: <ftcdocuments@gmail.com>
To: "Brooke, J. Ronnie" <JBROOKE@ftc.gov>, <jleibowitz@ftc.gov>, "Guerard, Collot" <CGUERARD@ftc.gov>, "Kopec, Janice" <jkopec@ftc.gov>, <senator_hatch@hatch.senate.gov>, <senator_mccain@mccain.senate.gov>, <senator.hutchinson@hutchinson.senate.gov>, <sen_dodd@dodd.senate.gov>, <senator_lieberman@lieberman.senate.gov>, <senator@biden.senate.gov>, <bob_graham@graham.senate.gov>, <senator_coverdell@coverdell.senate.gov>, <larry_craig@craig.senate.gov>,

<dirk_kempthorne@kempthorne.senate.gov>,
<wendell_ford@ford.senate.gov>, <senator@mccconnell.senate.gov>,
<john_kerry@kerry.senate.gov>,
<john_ashcroft@ashcroft.senate.gov>,
<senator@bryan.senate.gov>, <senator_reid@reid.senate.gov>,
<senator_domenici@domenici.senate.gov>,
<jesse_helms@helms.senate.gov>,
<senator_dewine@dewine.senate.gov>,
<senator@hollings.senate.gov>, <senator@thurmond.senate.gov>,
<senator_thompson@thompson.senate.gov>,
<vermont@jeffords.senate.gov>, <senator@robb.senate.gov>,
<senator_gorton@gorton.senate.gov>,
<senator@rockefeller.senate.gov>,
<senator@feingold.senate.gov>, <senator_kohl@kohl.senate.gov>,
<senator@enzi.senate.gov>, <craig@thomas.senate.gov>,
<jbrill@ftc.gov>, <eramirez@ftc.gov>, <jyoung2@ftc.gov>,
<ryodaiken@ftc.gov>

Cc: "ncrane@stirba.com" <ncrane@stirba.com>, "Weinman, Dotan"
<dweinman@ftc.gov>, <kamena@washpost.com>,
<tsukayamah@washpost.com>, <Marcus_Smith@nvd.uscourts.gov>,
Dennis Romboy <Romboy@desnews.com>, "DeMille, David"
<ddemille@smgpo.gannett.com>, <harrisonj@washpost.com>,
<info@mikelee2010.com>, <uag@utah.gov>, <ncarlisle@sltrib.com>,
<mrogers@sltrib.com>, <usaut.webmaster@usdoj.gov>,
<chris.allred@usdoj.gov>, <linda.mcfarlane@usdoj.gov>,
<melodie.rydalch@usdoj.gov>, <jdobner@ap.org>

Date: 11/30/2011 01:51 PM

Subject:Re: Subpoena

Ronnie,

I have made several attempts to retrieve the information I am seeking with the subpoena from Collot. I have attached the email exchanges with Collot on the matter for your review. If Collot would be honest about the conversation we had while I was incarcerated, there would not be a need to subpoena the jail for the recording and records related to the call. For example, in her email Collot states, "I did not want to speak with you." Both her cover letter on the settlement offer, as well as the tape of the conversation will refute her claim. The letter also states "please contact me or my colleague, Ron Brooke, 202-326-3484". In a recent email I received from Collot, she said "I was expecting to be connected with the Watch Officer in order to ensure that the settlement offer, if sent by Federal Express from a federal agency, could be delivered to you." This is also untrue, as the woman who runs the mailroom at the jail will testify that Collot had called her previous to my conversation with her and had arranged to break the jail rules and send me the package via Federal Express. The recorded conversation will also show Collot

confirming to me that she had previously arranged to send the package Fedex.

This is not the only instance where Collot has lied in this case. She has lied numerous times to Judge Hunt. One instance in her filings with the court to convince the judge to disallow use of my funds for legal fees, and with her testimony in the Preliminary Injunction Hearing. For example, in the Preliminary Injunction Hearing, Collot testified that "there are none or very few government grants for individuals." Interestingly enough, the very government agencies who are charged with dispersing government grant money to individuals, are refusing my requests for copies of all the government programs which give grants to individuals. They stated their reason for declining my request was that there are too many programs and it would take too much time to compile all the information. Judge Hunt relied heavily on Collot's testimony in making his findings, that have resulted in me being denied the use of my own money to hire an attorney to represent me in this case.

Collot has also manipulated the courts receiver to use the extraordinary power given to him by the court, as a weapon against me to try and force me to sign her settlement agreement. I intend to raise these issues as well as others like it with Judge Hunt. I also intend to use the information about the call I was forced to take from Collot while I was in jail. This further demonstrates her pattern of reckless behavior and lies. I may also use some of the information gathered from the subpoena in my attempts to have her removed from this case as stated in my earlier email.

Finally, you state in your email "your baseless accusation that the FTC engaged in some form of misconduct." Your cavalier attitude about this phone call (while certainly an accurate reflection of FTC staff attitudes in general) is disturbing to say the least. I was forced to speak to the very government prosecutor who was responsible for my arrest. I was not allowed to have my attorney present for the call. When I told the guard I did not want to speak with her and that she was the prosecutor in the case against me, I was told that I did not have a choice and that I better cooperate with the call or I would be punished. The only purpose for her call was to gather information from me to be used against me in the criminal matter and to threaten me and try and force me to sign a completely unacceptable settlement agreement.

I understand that you were not a party to the call, but all this will all be reflected in the recording of the phone call when I get it. I understand that you are given broad power over me in this lawsuit, but your power is not without limits. It is clearly a violation of my constitutional rights to be forced to speak to a government prosecutor while being detained

pending trial, without my attorney present. I am not sure if Chairman Leibowitz agrees with your assertion that this call does not represent any misconduct on Collot's part, but if he does then perhaps this is something that the Senators who are debating his nomination to a 2nd term at the FTC should probably consider. Further both Judge Nuffer and US Attorney Brent Ward disagree with your claim that here was nothing improper about the call and I have attached pages from the court transcript to reflect that.

Ronnie, as you know I have cooperated with every aspect of the FTC's investigation. I gave you ever document you requested. You have the contact information of every customer that has ever purchased anything from our company. You have every email ever written or received from myself and the other defendants in this case. You have all our servers and documents including everything that is considered protected under attorney client privilege. In return you refused to give me the documents I need for my defense and have blocked every subpoena and every deposition I wish to take related to my defense in this case. You have a team of experienced litigators working full time on this case. You have issued countless subpoenas and taken numerous depositions related to this case. I, on the other hand am forced to defend myself in this case and your team of lawyers has done everything in their power to stop me from gathering evidence for my defense. You can keep coming up with new reasons to have me arrested, you can have the receiver continue to harass my friends, family and former business associates, you can even keep filing information with the court filled with your venomous lies, but I will never sign this settlement agreement as it currently stands.

We did not commit any fraud whatsoever. I attended your conference on negative options, We hired attorneys to review our websites to ensure they were compliant. Our websites were also reviewed by government investigators from the consumer protection division and they found no issues with them whatsoever. We never, at anytime, used a false testimonial and we did not ever develop a website without all the terms and conditions of the offer clearly disclosed. I have also attached a polygraph reflecting all this and I would be happy to take another one with the polygraph expert of your choosing if I can be assured it would lead to a REASONABLE settlement in this case.

I, and the other defendants in this case have decided that we will no longer remain silent and let you mislead the media with your lies and deceit. We are compiling documentation to prove that we are innocent of your allegations. We intend to post this information online over the next few months at www.evilftc.com. If you wish to review and comment on our postings before we make them public please let me know and I

will give you that opportunity, but in return I will expect you to take a reasonable amount of time to review the material and give your feedback.

I believe that I have given you sufficient information to show that the subpoena to the Davis County Jail is likely to produce information relevant to the case. Please let me know if you still intend to quash the subpoena.

Thanks,

Jeremy Johnson

On 11/29/11 7:04 PM, "Brooke, J. Ronnie" <JBROOKE@ftc.gov> wrote:

Mr. Johnson,

Thank you for forwarding us a copy of the subpoena via email. We have yet to receive the copy you mailed to us and would request that in the future you serve notice of such subpoenas on the FTC via an email to Ms. Guerard, Ms. Kopec, Mr. Weinman, and me.

We urge you to withdraw the subpoena because it is an abuse of the civil discovery process in this case. The subpoena is improper because it seeks information that is not reasonably calculated to lead to the discovery of evidence that is relevant to any party's claims or defenses in this action. As we have previously explained to you, under the rules that govern the FTC's lawsuit against you, the Federal Rules of Civil Procedure, "parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). The information you seek via the subpoena appears only to concern your baseless accusation that the FTC engaged in some form of misconduct. The information you seek from the Davis County Jail is not at all relevant to any claim or defense in the Commission's lawsuit against you.

Please inform us immediately (via email) whether you will be serving the subpoena on the Davis County Jail. If you will be serving the subpoena, we will ask the Court to quash the subpoena.

Furthermore, we would note that in future subpoenas to non-parties, you should ensure that the requests ask for documents and do not seek answers to interrogatories and that the requests are not overbroad.

Regards,

Ron Brooke
Federal Trade Commission
Division of Marketing Practices

600 Pennsylvania Ave., NW, H-286
Washington, DC 20580
202.326.3484 - phone
202.326.3395 - fax
jbrooke@ftc.gov

From: ftcdocuments@gmail.com [mailto:ftcdocuments@gmail.com]
Sent: Tuesday, November 29, 2011 3:14 PM
To: Kopec, Janice
Cc: 'ncrane@stirba.com'; Brooke, J. Ronnie; Weinman, Dotan; Guerard, Collot
Subject: Subpoena

Janice,

The attached subpoena was sent to you vis US mail. I have not heard back if you have any objections so I am making sure its ok to serve this subpoena. If you do not reply then I will assume you do not object.

Thanks,

Jeremy Johnson
(See attached file: CollotEmail.pdf)(See attached file: CoverLetter.pdf)(See attached file: TranscripPagesFromHearing.pdf)
(See attached file: Polygraph Test.pdf)

Exhibit B

**DECLARATION OF REEVE TYNDALL
PURSUANT TO 28 U.S.C. § 1746**

I, Reeve Tyndall, have personal knowledge of the following facts and matters discussed in this declaration, and, if called as a witness, could and would testify to them.

1. I am a citizen of the United States and am over the age of eighteen. I am employed as an Investigator for the Federal Trade Commission ("FTC") in the Division of Marketing Practices, Bureau of Consumer Protection. My office address is 600 Pennsylvania Avenue, NW, Washington, DC 20580.

WEBSITE DOMAINS

2. On November 7, 2011, FTC staff became aware of the website *FTCTactics.com*. The website contained Jeremy Johnson's Motion for the Appointment of an Auditor. According to the website, the motion was filed under seal.

a. According to the website's internal index, PDF exhibits in support of the motion were uploaded to the website in October 2011. A printout of the index is **Attachment A**.

3. On December 30, 2011, the FTC received a subpoena response from Bluehost, Inc., in response to an FTC subpoena to FastDomains.com, Inc. BlueHost is a sister company of FastDomains. According to BlueHosts' subpoena response:

a. Defendant Andy Johnson purchased the following domains. The relevant invoices are **Attachment B**.

Domain Name	Date Registered
FTCTactics.com	October 12, 2011
RobbEvansFraud.com	November 14, 2011
FTCAudit.com	November 21, 2011
AuditTheFTC.com	November 21, 2011
RobbEvansAndAssociates.com	December 4, 2011

b. According to the subpoena response, RobbEvansAndAssociates.com was purchased using Defendant Jeremy Johnson's credit card. A copy of the invoice is **Attachment C**.

i. On December 30, I visited the domain RobbEvansAndAssociates.com. The domain address redirected me RobbEvansFraud.com.

c. Defendant Kevin Pilon purchased the following domains. The relevant invoices are **Attachment D**.

Domain Name	Date Registered
RonnieBrooke.com	December 2, 2011
JaniceKopec.com	December 2, 2011

Declaration of Reeve Tyndall
Investigator, Federal Trade Commission

Exhibit A

EvilFDIC.com	December 2, 2011
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- d. Defendant Jeremy Johnson purchased the following domains. The relevant invoices are **Attachment E**.

Domain Name	Date Registered
FTCFraud.org	December 3, 2011
FTCAbuse.com	December 3, 2011
FTCAbuse.org	December 3, 2011
FTCScam.com	December 3, 2011
FTCHatesBusiness.com	December 3, 2011
FTCCorruption.com	December 3, 2011
CorruptFTC.com	December 3, 2011
FTCExtortion.com	December 3, 2011
FTCFTC.com	December 3, 2011
TheFTC.info	December 3, 2011
FederalTradeCommission.biz	December 3, 2011
FederalTrade.info	December 3, 2011
TheConsumerProtection.com	December 3, 2011
BureauOfConsumerProtection.net	December 3, 2011
OfficeOfConsumerProtection.com	December 3, 2011
FTCRules.com	December 3, 2011
FTCLaws.com	December 3, 2011
FTCComplaint.com	December 3, 2011
FTCReport.net	December 3, 2011
FTCgov.net	December 3, 2011
FTCTheft.com	December 3, 2011
FTCRegulations.net	December 3, 2011
FTCLawyer.net	December 3, 2011
FTCCommissioner.com	December 3, 2011

4. On December 16, 2011, the FTC received a subpoena response from Web.com, a Do-It-Yourself website design company. According to the subpoena response, Defendant Jeremy Johnson registered and paid for the following domains: *EvilFTC.com*, *BadFTC.com*,

1 *CollotGuerard.com*, and *CollotGeurard.com*. A copy of Web.com account registration and
 2 payment information for these domains is **Attachment F**.

3 5. On January 3, 2012, I visited the web page EvilFTC.com.

4 a. I looked up the meta tags for EvilFTC.com (keywords a website provides to
 5 search engines to influence results). The web page EvilFTC.com had the
 6 following meta tags:

7 i. "ftc complaints," "ftc identity theft," "consumer protection agency,"
 8 "federal trade commission," "ftc USA," "federal trade commission rules,"
 9 "fraud prevention center," "fraud protection service," "federal bureau of
 10 consumer protection," "federal trade commission complaint."

11 6. On January 3, 2012, I visited the web page EvilFTC.com/blog.

12 a. I looked up the meta tags for EvilFTC.com/blog (keywords a website provides to
 13 search engines to influence results). The web page EvilFTC.com/blog had the
 14 following meta tags:

15 i. "federal trade commission," "federal trade commission regulations," "ftc
 16 regulations," "petition to the government," "ftc," "federal consumer credit
 17 card protection act," "consumer trade commission," "federal consumer
 18 credit protection act," "federal bureau of consumer protection"

19 b. I looked up the meta name for EvilFTC.com (a summary of the website that
 20 appears in search engine results). The web page had the following name

21 i. "Evilftc experts always helps the government as these experts also
 22 involved in some of the civil action with ftc. A number of fraud, theft
 23 cases solved by the evilftc experts."

24 AVAILABILITY OF GOVERNMENT GRANTS

25 7. On December 29, 2011 I visited the *Grants.gov* blog discussed in Mr. Johnson's
 26 Reply to the FTC's Motion Regarding Deceptive Domain Names, Websites, and E-Mails (DE
 27 421). According to a *Grants.gov* blog post from June 2009, a copy of which is **Attachment G**:

28 *"Grant fraud is an ever emerging issue, and there are a lot of people trying to
 cash in on the lack of knowledge about federal grants. We have all seen them;
 late night infomercials, websites, and reference guides, advertising 'millions in
 free money' Don't believe the hype! Although there are many grants on
 Grants.gov, few of them are available to individuals and none of them are
 available for personal financial assistance."*

8. On December 29, 2011, I visited the website *Recovery.gov*, the official website
 for the American Recovery and Reinvestment Act of 2009 ("Recovery Act").

a. According to a blog published on the website, the "Recovery Act makes no
 provision for direct payments to individuals to cover . . . mortgages, car
 payments, general living costs, and other personal expenses." A printout of this
 blog post is **Attachment H**.

1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed on January 3, 2012 in Washington, DC.

3 /s/ Reeve Tyndall
4 Reeve Tyndall
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Declaration of Reeve Tyndall
Investigator, Federal Trade Commission

COLLOT GUERARD
cguerard@ftc.gov
J. RONALD BROOKE, JR.
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JANICE L. KOPEC
jkopec@ftc.gov
DOTAN WEINMAN
dweinman@ftc.gov
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 288
Washington, DC 20580
202-326-3338 (Guerard)
202-326-3484 (Brooke)
202-326-2550 (Kopec)
202-326-3049 (Weinman)
202-326-3395 (facsimile)

BLAINE T. WELSH
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702-388-6336
702-388-6787

Attorneys for Plaintiff Federal Trade Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JEREMY JOHNSON, *et al.*

Defendants.

Case No. 2:10-cv-02203-RLH-GWF

PLAINTIFF FTC'S
EMERGENCY MOTION
REGARDING DECEPTIVE
DOMAIN NAMES, WEBSITES,
AND E-MAILS

The Federal Trade Commission ("FTC") is forced to moves, on an emergency basis, for an order enjoining defendant Jeremy Johnson ("Johnson") and those working in concert with

FTC Emergency Motion Regarding Deceptive Domain Names, Websites, and E-Mails
FTC v. Jeremy Johnson., et al.

him from deceptively using domain names, websites, and Facebook and Twitter pages that either expressly or impliedly claim to be associated with the FTC or FTC attorneys. Johnson and his associates have registered at least three Internet domains that deceptively purported to be the domains of FTC attorneys, and have created websites and Facebook and Twitter pages that falsely claim to be affiliated with the FTC. To bring an immediate halt to these deceptions, the FTC asks for an order: (1) prohibiting Johnson and those working with him from registering or using domain names, social networking accounts, and e-mail addresses, that state or imply a relationship with the FTC or any FTC employee or agent; and (2) requiring domain name registrars for the domains *collotguerard.com*, *ronniebrooke.com*, *janicekopec.com*, and any other domain name that purports to be related to an FTC attorney or agent, to immediately cause visitors to websites with these domains to see a blank page or, alternatively, to transfer such domains to the control of the Receiver. Each day that passes without the requested relief allows Johnson and those working with him to continue their deceptive, improper and injurious practices.

RELEVANT FACTS

On November 30, 2011, Johnson e-mailed several employees of the FTC, including Chairman John Leibowitz, to discuss bogus allegations he had against the FTC.¹ Johnson sent this e-mail from the address *ftcdocuments@gmail.com*,² copying, among others, commissioners of the FTC, numerous members of the U.S. Senate, his criminal defense attorney, members of the media, department of justice employees, employees of the State of Utah, and the Court. Johnson used *ftcdocuments@gmail.com* despite repeated requests from the FTC that he cease

¹ Nov. 30, 2011 e-mail chain, attached to this Motion as Exhibit A, at 1-5.

² Johnson previously also set up the following e-mail accounts: *collotgureard@gmail.com* and *robbevansemail@gmail.com*.

1 using that e-mail address because it misleadingly suggests that the address is associated with the
2 FTC.³

3 In his November 30th e-mail, Johnson stated that “he, and the other defendants in this
4 case” intend to use their website, *www.eviflftc.com*, to post information related to this matter.⁴
5 The *eviflftc.com* website has a Twitter account through which it has issued misleading and false
6 statements, such as “Number one fraud, theft examiner agency launched its website” and
7 “Eviflftc working with Federal Trade Commission to solve a number of legal cases.”⁵

8 Also on November 30th, the Court responded to Johnson’s e-mail, informing him that
9 “[a]ny communication with the Court must be by a motion or other proper document filed with
10 the Clerk of Court [and that] [a]ny further violation of this instruction will result in sanctions.”⁶
11 The Court further informed Johnson that his “email address, <ftcdocuments@gmail.com>, is an
12 improper use of a governmental agency’s initials and is misleading,” and instructed Johnson “to
13 change it to a name which accurately identifies you as the sender, and does not present the
14 impression that it is an official governmental or court source.”⁷

15 Yet, only two days later, Johnson stepped up his shenanigans in defiance of the spirit of
16 the Court’s instructions. Johnson and others working with him purchased and/or gained control
17 over the Internet domains and websites *ronniebrooke.com* and *janicekopec.com*.⁸ Previously,
18

19 ³ See, e.g., October 20, 2011 letter from FTC staff attorney R. Brook to Johnson and November 4,
20 2011 e-mail from FTC staff attorney J. Kopec to Johnson, attached to this Motion as Exhibit B. All FTC
21 staff correspondence with Johnson copy, as professional courtesy, his criminal defense attorney Nathan
Crane.

22 ⁴ Nov. 30, 2011 e-mail chain, Exhibit A, at 1-5.

23 ⁵ See Supplemental Declaration of Reeve Tyndall Exhibit (Tyndall Dec.), attached to this Motion
24 as Exhibit C, at ¶¶ 7-8.

25 ⁶ Nov. 30, 2011 e-mail chain, Exhibit A, at 1.

26 ⁷ *Id.*

27 ⁸ See Exhibit C (Tyndall Dec.) at 5.

Johnson purchased and gained control over the domain *collotguerard.com*.⁹ Collot Guerard, Ronnie Brooke and Janice Kopec are all FTC staff attorneys assigned to this matter. In purchasing these domains and websites, Johnson also gained access to e-mails that carry these domain names, e.g., *collot@collotguerard.com*, *ronnie@ronniebrooke.com*, and *janice@janicekopec.com*.¹⁰ The website *collotguerard.com* also has a sponsored Google link, which means that someone paid to advertise that website on Google so that it would appear at the top of the screen in Google searches that include Ms. Guerard's name.¹¹ On *collotguerard.com*, Johnson falsely states that "[s]he has been accused of fraud and corruption."¹² The bottom left of the website's home page includes the following statement: "Copyright © 2011 Collotguerard.com. All Rights Reserved."¹³ Johnson and others acting in concert with him also purchased and/or gained control over the domain and website *Robbevansfraud.com* and the e-mails associated with that domain.¹⁴

On December 12, 2011, upon discovering that Johnson had gained control over the domains and websites *collotguerard.com*, *ronniebrooke.com* and *janicekopec.com* (and the e-mails associated with these domains), the FTC immediately informed Johnson that his conduct constitutes the type of deceptive conduct from which the Court specifically instructed Johnson to refrain.¹⁵ In a meet and confer communication with Johnson, FTC staff attorney Dotan

⁹ See *Id.* at ¶¶ 3-4.

¹⁰ While FTC staff has not seen emails sent from these domains, there is nothing that would prevent the operator of these domains from sending emails that appear to be from Ms. Guerard, Mr. Brooke, or Ms. Kopec.

¹¹ See Exhibit C (Tyndall Dec.) at ¶¶ 3-4.

¹² See *Id.*, Attachment B.

¹³ See *Id.*

¹⁴ The Receiver filed an emergency motion with respect *Robbevansfraud.com* that is pending with the Court (see D.E. 416.)

¹⁵ Dec. 12-13, 2011 e-mail chain, attached to this Motion as Exhibit D, at 3.

Weinman requested that Johnson commit to relinquishing all ownership and control over these domains and websites by December 13 at 4:00 p.m. Mr. Weinman advised Johnson that the FTC would be forced to seek Court intervention if Johnson failed to do so.¹⁶

The following morning, Johnson responded by discussing various unrelated issues, and concluded his e-mail by stating: “I am confident that if you will engage in an open dialog with all the issues including mine then we can work to resolve the issues you are concerned about in your email and thus avoid unnecessary burdens on the court.”¹⁷ Mr. Weinman replied shortly thereafter, addressing each of the unrelated issues raised by Johnson and demanding, once again, that Johnson agree to relinquish all control over the deceptive domains and websites or the FTC would be forced to seek relief from the Court.¹⁸ Johnson’s response to Mr. Weinman’s second e-mail included, among others, the following statement: “I noticed that you purchased dotanweinman.com yesterday and you certainly could have purchased the other domains earlier if you did not wish for them to be used by others.”¹⁹ Johnson also declared that he was “not the owner of any of the mentioned domains including ftctactics.com,” and “[t]he domains are not owned, hosted, or controlled by me.”²⁰ This declaration, however, proved to be a *false statement*. The company that registered the domain *collotguerard.com* confirmed, in response to a subpoena from the FTC, that Johnson is their customer and contact person with respect to this domain.²¹

At the conclusion of his lengthy e-mail, Johnson stated: “I do think its possible to address you [sic] concerns without court intervention. It may even be possible to turn over the

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 1-2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Exhibit C (Tyndall Dec.) ¶¶ 3-4.

domains and related content as part of a reasonable settlement agreement in this case.”²²

Because Johnson continues to refuse to relinquish all control and ownership over the relevant domains, websites and e-mails, the FTC is forced to file the instant Motion.

ARGUMENT

1. The Use of Domains, Websites, and E-Mails with Names of FTC Attorneys is Improper, Misleading, and is Not Protected by the First Amendment of the U.S. Constitution

The use or potential use by Johnson and others acting in concert with him of domains, website, and e-mails with names of FTC attorneys is improper and misleading in the same manner that Johnson’s use of *ftcdocuments@gmail.com* was improper and misleading. The use of domains, websites and e-mails with names of FTC attorneys may create the impression that such domains, websites and e-mails belong to a government agency or government agents and reflect their statements. In addition, a party’s bad faith use of an Internet domain incorporating, without permission, the name of another party is not only misleading, but may bring extremely harmful consequences for the abused party. *See, e.g., In Panavision International, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998) (explaining the injurious consequences resulting from one party’s use of another party’s name in the context of a Lanham Act action). An individual’s name is entitled to protection from abuse and misuse via registration of Internet domains, particularly where the apparent purpose is to mislead the public and parties relevant to this matter, and/or harass federal employees conducting legitimate government business. *See, e.g., Felsher v. University of Evansville*, 755 N.E.2d 589, 601 (Ind. 2001) (upholding injunction against a defendant who abused and invaded the privacy of university employees “by creating and modifying websites and e-mail addresses containing their names”); *Guion v. Terra Marketing of Nevada, Inc.*, 523 P.2d 847 (Nev. 1974) (upholding an injunction against individual who placed signs in front of a business location with false and defamatory information concerning an agent of that business).

²² Dec. 12-13, 2011 e-mail chain, attached to this Motion as Exhibit D, at 1-2.

1 This Motion does *not* seek to interfere in any way with Johnson's ability to express his
 2 opinions – meritless and scandalous as they may be – on the Internet to the extent permitted by
 3 the First Amendment. The FTC is simply requesting that the Court prevent Johnson from using
 4 deceptive, improper and abusive venues. The number and variety of domains and e-mail
 5 addresses available to Johnson and those working in concert with him are unlimited. There is
 6 simply no legitimate reason for Johnson to use domains and e-mails carrying the names of FTC
 7 attorneys. Johnson is not seeking legitimate outlets for his views, but merely continues his
 8 pattern of deceit and harassment and is attempting to interfere with legitimate government
 9 business via illegitimate means. The Court has already instructed Johnson not to act in this
 10 manner and should not allow him to continue to defy the spirit of the Court's instructions.

11 **2. The Court Should Instruct the Companies Hosting the Domains and**
 12 **Websites to Cause Them to Show a Blank Screen or Transfer Them to**
 13 **the Receiver; Enjoin Johnson and Those Working with Him from**
 14 **Engaging in the Type of Practice at Issue Here, and Warn Them That**
 15 **They Will be Sanctioned if They Violate the Injunction**

16 To ensure that Johnson and those working with him cease to engage in the deceptive,
 17 improper, and abusive practice described in this Motion, the Court should instruct the companies
 18 hosting the relevant domains and websites to cause them to show a blank screen or immediately
 19 transfer control of the domains and websites to the Receiver. In addition, the Court should
 20 enjoin Johnson and those working with him from engaging in such practices and warn them that
 21 they will face severe sanctions if any such practices recur. *See Felsher*, 755 N.E.2d at 601 (“It is
 22 reasonably foreseeable that [defendant] will misappropriate the likenesses of the plaintiffs by
 23 further availing himself of the Internet's capacity to feature photographs, images or other
 24 representations of identity [and] [t]herefore, the trial court properly included the phrase ‘names
 25 and likenesses’ when it enjoined” defendant.). The Court already issued a similar warning to
 26 Johnson in response to his use of the deceptive e-mail *ftcdocuments@gmail.com*.²³

27 ²³ This is not the first time that Johnson has demonstrated a willingness to attempt to evade the
 28 spirit of this Court's orders. After this Court stayed the Receiver's time to answer the Complaint that
 Johnson filed with a Utah state court in violation of the Preliminary Injunction, Johnson immediately filed

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1 **3. The Court Should Instruct Johnson and Those Working with Him to**
2 **Refrain from Making Misleading Statements on the Internet**

3 While the websites *ftctantics.com* and *evilftc.com* reflect bad-faith and include unfounded
4 allegations, this Motion does not challenge Johnson and his associates' use of these domain
5 names. These domain names are not likely to mislead a member of the public into thinking that
6 the websites are official governmental websites or are websites controlled by government
7 attorneys or agents. Nevertheless, the content on these sites includes a number of misleading
8 statements. For instance, the Twitter account of *evilftc.com* falsely claims that the "Number one
9 fraud, theft examiner agency launched its website" and that "Evilftc working with Federal Trade
10 Commission to solve a number of legal cases."²⁴ The FTC, therefore, urges the Court to enjoin
11 Johnson and those working with him from making any false or misleading representations that
12 expressly state or imply that they are agents of the federal government or working with agents of
13 the federal government. In addition, to the extent that Johnson and those who work with him
14 include defamatory statements on their websites, the FTC reserves its right to seek redress to the
15 full extent permitted by applicable laws.

16 **CONCLUSION**

17 For the foregoing reasons, the FTC respectfully requests that Court enter an order: (1)
18 prohibiting Johnson and those working with him from registering or using domain names, social
19 networking accounts, and e-mail addresses, that state or imply a relationship with the FTC or any
20 FTC employee or agent; (2) requiring domain name registrars for the domains
21 *collotguerard.com*, *ronniebrooke.com*, *janicekopez.com*, and any other domain name that
22 purports to be related to an FTC attorney or agent, to immediately cause visitors to websites with
23 these domains to see a blank page or, alternatively, to transfer such domains to the control of the
24 Receiver; (3) providing any other relief that the Court deems proper.

25

26 an amended complaint, apparently in attempt to restart the clock.

27 ²⁴ See Exhibit C (Tyndall Dec.) ¶¶ 7-8.

1 Dated: December 15, 2011

Respectfully submitted,

3 /s/ Dotan Weinman

4 Collot Guerard

J. Ronald Brooke, Jr.

5 Janice L. Kopec

Dotan Weinman

6 *Attorneys for the Plaintiff*

7 *Federal Trade Commission*

CERTIFICATE OF SERVICE

I hereby certify that I have on December 15, 2011 caused the foregoing document to be served via the ECF system on the following:

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